Legal Formulary,

OR

A Collection of Forms to be Used in the Exercise of Voluntary and Contentious Jurisdiction.

To which is added an Epitome of the Laws, Decisions and Instructions pertaining thereto.

BY THE

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LETTER OF APPROVAL.

From His Holiness, Pope Leo XIII.

"..... *The Holy Father has accepted 'Legal Formulary' especially in the direction of making canon law more known in your country, and that the ecclesiastical affairs may be always better regulated according to it.*"

FR. CARDINAL SATOLLI.

Nov. 3, 1898.

EXTRACTS FROM LETTERS OF CARDINALS.

His Eminence, M. Cardinal Ledochowski, Prefect of the Propaganda, writes on October 7, 1898:

"....I predict that this collection of forms will prove useful for the diocesan curiæ of your country....."

His Eminence, M. Cardinal Rampolla, Secretary of State, writes on Oct. 3, 1898:

"....With satisfaction I recognize that in writing 'Legal Formulary' you have performed a very useful work, especially for your own country. Hence I thank you much for the copy so courteously sent me, and, taking advantage of this occasion, from my heart I profess the sentiments of my particular esteem for you."

His Eminence, C. Cardinal Mazzella, on Oct. 29, 1898, writes:

"....Having the endorsement which it has I make no doubt that 'Legal Formulary' will supply a want long felt in the United States, and prove a valuable handbook for the use of ecclesiastics who are too busily engaged in the duties of the ministry to make a long search through extensive volumes for a necessary formula...."

His Eminence, J. Cardinal Gibbons, Archbishop of Baltimore, writes on Nov. 2, 1898:

"My Dear Dr. Baart:—I beg leave to thank you for your new work, 'Legal Formulary,' which you were kind enough to send me. Your patient industry and studious habits, as well as your ability, lead me to hope that I will peruse with profit this last work from your pen.... Faithfully yours in Xst,

J. CARD. GIBBONS."

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INTRODUCTION.

Acting on the suggestion of several bishops the author has compiled this book of forms. The absence of such a work has been felt by many who are engaged in official diocesan affairs and by pastors whose time is too limited to permit a long search through extensive volumes when they need a necessary formula. By using a correct form in official documents much inconvenience and at times the danger even of nullity are precluded. In contentious matters great trouble is avoided by each of the interested parties knowing exactly what the other claims. Moreover, it is an undeniable fact that the forms hitherto used in some of our American ecclesiastical courts have with difficulty been sustained as canonical. While the law does not require any set form for documents, still it demands that certain necessary things be not omitted.

The forms given in the following pages are based on suggestions from Monacelli and Reiffenstuel, founded on the general laws of the church and especially adapted to the exceptional conditions of the United States. It is hoped that using these forms as a basis, with the help of the explanations given therewith, the reader will be able to construct readily whatever document his circumstances may demand.

The Formulary is confined to diocesan affairs; to bishops and priests and to their official relations. English being the language of our diocesan courts as well as of the Apostolic Delegation in Washington, this Formulary is printed in English, except where prudence requires the use of Latin. The object of this work is not to give extensive treatises on the various subjects mentioned, but rather to offer an epitome of the law on necessary points and to provide safe forms.

Whatever appears in the following pages is cheerfully submitted to the judgment and correction of proper ecclesiastical authority.

PETER A. BAART.

MARSHALL, MICH., August 15, 1898.

Note to the Third Edition.

The favorable reception of "Legal Formulary" has made a third edition necessary within six months of the first issue.

The Holy Father himself has deigned to accept the work and express the desire that through it canon law may become better known in the United States and that ecclesiastical affairs may be always better regulated according to it.

A few additions have been made to the text but the paging and paragraphing are the same, so that in quoting no confusion will ensue.

Jan. 25, 1899.

PART FIRST.

Forms for Diocesan Appointments.

CHAPTER I.

THE NOMINATION OF BISHOPS.

1. Authority in the Catholic Church comes from above. Hence the appointment of bishops to vacant sees depends directly or indirectly on the Sovereign Pontiff. In those countries over which the Sacred Congregation of the Propaganda has jurisdiction, where the ecclesiastical hierarchy has been established, the archbishop and the bishops of the province in which the vacant see exists, propose to the Sacred Congregation the names of three persons whom they deem fit for bishop to fill the vacancy. From the persons thus suggested, after hearing the deliberations of the Propaganda, the Sovereign Pontiff selects the bishop. However, this right of recommending must be understood to impose no obligation on the Pope of selecting one of the three suggested by the bishops. Not unfrequently does His

Holiness appoint some other person, especially if there be contention.

2. This recommendation made by the bishops, in some countries is made by them alone, in others with the participation of the clergy.

In the United States the consultors and the irremovable rectors of a vacant diocese suggest to the bishops of the province the names of three persons whom they deem fit for filling the vacancy. The archbishop convokes the meeting, usually within thirty days from the date of vacancy, and himself presides at the session; or, if he is impeded, then some suffragan bishop of the province designated by him. In case of vacancy in the archiepiscopal see, the suffragan bishop who is senior in consecration presides or designates another suffragan to preside.

3. The administrator of the vacant diocese has no right of his own authority to call this meeting; neither has he any right to be present at it unless he be a consultor or irremovable rector. Much less can the vicar general, the chancellor or the secretary of the deceased bishop attend the meeting. In fact their term of office expires with the coming of the vacancy. The archbishop or the bishop who presides appoints one of the consultors or rectors to act as secretary of the meeting; but no extraneous person may be introduced.

4. Before the consultors and rectors proceed to vote for candidates, they are obliged to make an oath that they in voting will be guided neither by friendship nor by favor. The ballot shall be a secret one and the law distinctly says it shall be considered only aconsultive not an elective vote. A person who is

both a consultor and rector nevertheless is entitled to but one vote. Each of the three places—most worthy, more worthy, worthy—is to be filled separately, so that each voter may write only one name at a time on his ballot. A majority of all the votes cast, including blank ballots, is required for the nomination to first place; then again, a majority of all the votes cast is required for a nomination to the second place. Likewise for the third. It is not necessary, though in cases it may be very advisable, that a complete record of all the votes cast be included in the minutes of the meeting, so that all the names and the circumstances may thus be brought to the notice of the bishops.

5. The bishop who presides will then send a copy of the minutes, countersigned by the secretary of the meeting, to the other bishops of the province and to the Sacred Congregation of the Propaganda. Hence these minutes should be written in Latin. Then the bishops will meet at a time appointed and discuss the names presented to them by the minutes and form a judgment on the candidates of the clergy and on others proposed by themselves in accordance with the instruction of the Sacred Propaganda under date of Jan. 21, 1861. If the bishops judge that the names proposed by the clergy should be rejected they will not neglect to give their reasons to the Sacred Congregation.

6. Since the bishops must discuss the candidates in accordance with the instruction of Jan. 21, 1861, it surely is advisable that the consultors and rectors, unless they wish to have their nominations rejected, should select only those to whom no objection can be

made. For this purpose the questions which are proposed regarding the necessary qualities of candidates for the episcopacy are given herewith, taken from the aforesaid iustruction and the Second Plenary Council of Baltimore. First, the name, surname, age, native country of the candidate are asked. Under this question it should be noted that the age required is thirty years completed. By native country is meant the place of birth. The civil governments of some countries positively prohibit any alien from occupying a residential see; and as it is the spirit of the Church that each country should have its native clergy, so also is it her wish that bishops be natives or at least naturalized citizens. Further, grave complications might arise in the United States regarding the tenure of real property by other bishops than citizens.

7. The second inquiry is, to what diocese and province does the candidate belong. Under this head it may be noted that the general law requires that the candidate be a cleric of the diocese whose see is to be filled. "De gremio ecclesiæ," says Reiffenstuel *Lib. I, Tit. 6, n. 233.* Likewise the Roman Breviary in the office of Pope Celestin, April 7, as well as Cap. 12 Dist. 61, says that this Pontiff enacted that "in the creation of bishops extraneous clerics or those previously unknown should not be chosen to the exclusion of meritorious ones in the church or diocese itself." There are also reasons of policy for such an enactment. A clergyman of the diocese knows both priests and people better than a stranger, and naturally has more influence with the public than one coming from another diocese or state where

both characteristics and policy are different. He is, therefore, not so liable to make mistakes and upset the entire regime of the diocese. Moreover, it is better for the clergy to be ruled by one they know than to take chances on the disposition of one whose character is known to them only by report. However, it should be remembered, as remarked by Zitelli, Apparatus Juris Ecclesiastici, page 16, that for good reasons the voters may select some one outside their own body and even outside the diocese, but in doing this they must have great care to select some one in every way more worthy than anyone in the vacant diocese. This is enacted by Pope Celestin, as found in Cap. 13 of Distin. 61, where he says: "But then another may be chosen from another diocese, if in the diocese over which the bishop is to be placed no one can be found who is worthy, which we do not believe occurs. For these must first be considered and rejected, before those from other dioceses can be rightly chosen." If, therefore, the consultors and irremovable rectors should choose a stranger to the diocese, their selection, more especially if complaint were made, would be liable to rejection by the bishops or the Propaganda. (*Confer Pignatelli*, *Tom. VI*, *Consult. 92.*) From the above quotation it follows that the bishops must also first examine whether there are worthy candidates in the widowed diocese, before selecting priests from another diocese or province. Especially is this true of old established dioceses with a numerous clergy.

8. The third question asks where the candidate has made his studies and with what success. The fourth question asks whether he has earned any de-

grees and which ones. The degrees here meant are those given by Catholic universities, that is, such as have a pontifical charter and confer degrees by papal authority. Universities which are Catholic in name, but confer degrees only by state or civil authority, cannot give their laureates any canonical privileges, for their degrees are not recognized by the Church. (*S. Cong. Conc. 24 Apr. 1665, 21 Feb. 1685. Confer Monacelli Suppl. T. I, n. 6.*) This distinction is important, for doctors and licentiates of Catholic universities have many privileges specifically recognized in church law. Some of these privileges are the following: 1°. They are placed in dignity, and therefore may receive papal letters, ordinarily not sent to the lower clergy. 2°. They rank with nobles, and by their degrees obtain true nobility and all its privileges. This is an important social consideration, especially in Europe. 3°. They are exempt from both real and personal taxes according to the Roman civil law. 4°. There is always a strong presumption in their favor and when found guilty of any crime, according to the same law, they are to receive lighter punishment than others. This holds in ecclesiastical law even to the present day. 5°. In conferring ecclesiastical dignities and benefices, other things being equal, doctors and licentiates must be preferred. In fact, the law specifically provides that the cathedral chapter must choose a doctor or licentiate of law or theology to act as administrator of the diocese when vacant, and if the chapter should choose some one else not a laureate, their act would be invalid. In a similar way there is an obligation to choose a doctor or licentiate for bishop provided he has the other

necessary qualities. Therefore, one of the questions to be answered in the process prepared for filling an episcopal see is, "What degrees has the candidate received and in what university?" The degrees here meant are of canon law and theology, not those of arts and medicine. The honorary degree of LL. D. granted by secular colleges is not recognized in ecclesiastical law.

According to the general law of the church a canonist is to be preferred to a theologian in filling a vacant bishopric. So exacting is the law that doctors or licentiates must be chosen for bishops that in the bulls of appointment issued from the Apostolic Chancery, if the Pope chooses a person not a laureate, he first grants a dispensation from this necessary requirement and records it in the bull of appointment. It follows that laureates of Catholic universities have an inherent right to be considered in filling the vacant see of the diocese to which they belong, and a neglect to consider them before selecting from outside the diocese would be a just cause of complaint and a reason for rejecting the candidates.

9. The institutions in the United States which confer degrees by pontifical authority are: The Catholic University of America, in Washington, D. C., chartered March 7, 1889; Georgetown University, in charge of the Jesuits, also in Washington, chartered March 30, 1833; St. Mary's University, in Baltimore, Md., in charge of the Sulpitian Fathers, chartered April 18, 1822, by Pope Pius VIII. In Canada, Ottawa and Laval universities have pontifical charters. At present England and Australia have no Catholic universities. The bishops of Ireland

have a charter for a university, but it has never been fully developed. In 1896 Pope Leo XIII granted Maynooth college authority to confer degrees in theology and philosophy. Belgium, France, Spain, Germany, Switzerland, Austria and especially Italy have universities which confer decrees by papal authority.

Doctors or masters are they who have obtained the highest grade and insignia in theology, law, medicine or philosophy. The titles of master and doctor are interchangeable; but custom as well as the statutes of certain universities, such as the Sarbonne, Louvain, Salamanca, and the practice of the Roman Court have brought it about that they who obtain the highest degree in theology are called masters of theology, but they who obtain a similar degree in law or in other sciences are called doctors.

Licentiates also come under the name of masters or doctors, and participate in all their privileges. Licentiates are they who have the license or faculty of taking whenever they wish the highest grade, and the public insignia thereof, in theology, law or medicine, because after examination they were not only found worthy, but were solemnly and lawfully given these rights. This degree is not given by secular universities, except at Cambridge, England, and there only in medicine. Bachelors are they who have obtained the first testimony of their progress and the first degree in any science or faculty. The requirements for this degree vary considerably in different universities. Bachelors obtain no canonical or ecclesiastical privileges. The insignia of the doctorate are the four-cornered cap, and a gold ring,

with a single stone setting, which is to be worn on the right hand. Some universities have also special insignia, particularly in the hoods or capes worn by their laureates.

Universities which confer degrees by pontifical authority can give them only to such candidates as are found worthy through examination, and are sound in the Catholic faith as well as conspicuous for morality. During the ceremony of conferring the degree, especially in theology, the candidate is required to make a profession of faith, and to swear assent to the following articles: 1°. That he will never teach or write intentionally anything that is repugnant to Holy Scripture, tradition, the definitions of general councils or the decrees of the Supreme Pontiffs. 2°. That he will be watchful in doing his share to preserve the unity of the Church and not let the seamless garment of Christ be rent by divisions; also that he will be studious in seeing due honor paid to the Sovereign Pontiff, and obedience and reverence to his own bishop. 3°. Under the same oath he promises to defend the Christian, Catholic and Apostolic faith even to the effusion of his blood.

10. The fifth question of the process asks whether the candidate has been a professor and if so of what faculty. The sixth regards the parish work of the candidate and his success therein. The seventh query is how many and which languages does he know. The eighth question asks what offices has he filled and with what success. The ninth inquires into his prudence in deliberations and in action; and the tenth asks whether he is in good bodily health, temperate, patient and well versed in administering

temporal affairs. The eleventh query is whether he be of constant or of changeable mind; the twelfth, whether he be of good reputation, or whether at any time there was in his conduct something against good morals. The thirteenth question asks whether he is attentive in performing his sacerdotal duties, edifying and observant of the rubrics; and the last asks whether in dress, carriage, walk, speech and all else he shows forth gravity and religion.

From the answers to all these questions a complete knowledge of the candidates can be gathered, and a judicious selection seems possible. This process is of obligation for all countries subject to the Propaganda.

11. When there is question of designating a coadjutor with the right of succession to a bishop, the same method is followed as in case of a vacancy, with this only difference that in such case the archbishop or bishop, for whom a coadjutor is sought, presides at the meeting of the consultors and irremovable rectors, or if he is hindered then his vicar general or some other delegated priest. Further, in this case it is not improper for him to suggest the names of those whom he judges best adapted for the position of coadjutor. However, the voters are in no way bound by his designation. When there is question of a coadjutor for an archbishop, all the archbishops of the other provinces are also to be consulted. This obtains *a fortiori* when a new archbishop is to be selected. For the appointment of only an auxiliary bishop the above method is not strictly necessary.

When a new diocese is erected, the same regulations are followed, except that the consultors of the

old diocese or dioceses from which the new one is formed and the irremovable rectors of the new diocese meet to suggest the names of three candidates.

12. In Australia nearly the same method is prescribed as in the United States.

In England, where they have cathedral chapters, the dignitary and canons of the vacant see meet under the presidency of the archbishop, or if he is detained or there is question of a vacancy in the archiepiscopal see, then under the senior bishop. The presiding bishop, however, takes no other part in the matter. The capitular acts are immediately sent to the archbishop or the senior bishop, who summons the other bishops to a meeting, at which, having compared notes, they make a written report on each of the three candidates and annex their judgment. The three names, it should be noted, are arranged in alphabetical order.

The same method is followed in Scotland as in England.

13. In Ireland, the metropolitan of the province by letter directs the vicar capitular to summon for a meeting, to be held twenty days after the call, all who have a right to recommend candidates to the Sovereign Pontiff. All parish priests, who being free from censure, have actual charge of parishes, must be summoned. Where there is a cathedral chapter the canons must also be called. The metropolitan or one of his suffragans delegated by him will preside; but pending a vacancy in the metropolitan see the senior suffragan will preside. After an oath to choose the one they deem worthy, all will cast their ballots. A duplicate copy of the minutes is made,

one of which the vicar capitular sends to the Propaganda, the other to the metropolitan. The metropolitan and the suffragan bishops then meet and form a judgment on the candidates, which is put in writing and signed by each bishop, sealed and sent to the Holy See. When the commendation is once made by the clergy, if the bishops deem the three candidates unworthy, the Sovereign Pontiff will make the appointment without another recommendation. The same method is followed in nominating a bishop-coadjutor with the right of succession, except that in such case the bishop who seeks the coadjutor presides.

14. In Holland the cathedral chapters present the names of three candidates, concerning whom the bishops form a judgment and report to the Holy See whom they deem more worthy.

In Canada the archbishop and the bishops of the province propose three names to the Propaganda. In other places, where the law gives no one the right of recommendation, the Sacred Congregation of the Propaganda suggests a worthy candidate to the Holy Father.

In those places where the hierarchy is not yet established, but where vicars apostolic with the episcopal character exercise jurisdiction, the superior of the religious order in charge of the missions of that territory recommends a person for vicar apostolic. Where no religious order has control the Holy Father, after consulting the Propaganda, makes the appointment.

15. No special form is required for drawing up the minutes of the meeting of the consultors and irre-

movable rectors mentioned above. Certain facts should of necessity be stated, such as the date and place of the meeting, the previous issuance of the call, the bishop presiding, the names of those present and whether they constitute all or at least a majority of those entitled to vote. The details of the meeting may or may not be given, but care should be taken to express distinctly the full names of those selected for the three positions of dignissimus, dignior, dignus. The signatures of the presiding bishop and of the secretary of the meeting must be attached to the document. Good policy usually requires that the names proposed be kept secret; but there is no authority for exacting an oath to this effect.

CHAPTER II.

APPOINTMENT OF VICAR GENERAL.

16. Usually one of the first concerns of a bishop is the selection of a competent vicar general. A vicar general is a cleric legitimately appointed to exercise in a general way episcopal jurisdiction in the bishop's stead and in such a manner that his official acts are considered the acts of the bishop himself. Once appointed the jurisdiction of the vicar general is ordinary from the office, not delegated from the bishop. Hence no appeal lies to the bishop from the action of the vicar general, but only to the metropolitan or other higher authority.

17. It is controverted whether a vicar general must have by virtue of his office jurisdiction in temporal matters as well as in spiritual; but it seems from the council of Trent (*Sess. 13, chap. 2 and 3 de ref.*) and from the practice of the Roman Court that a cleric with general jurisdiction over the diocese only in spiritual matters may nevertheless rightly be called a vicar general. On the other hand, a cleric with jurisdiction only in temporal matters even over the whole diocese, is surely not a vicar general, but, as doctors teach, is to be considered a procurator or econome and cannot be a delegate of the Holy See unless he is otherwise in dignity. When a bishop appoints a cleric his vicar general

without restriction, the law gives the appointee jurisdiction in both spiritual and temporal matters. Hence if a bishop prefers that the vicar general should not interfere in the temporal administration of the diocese he should be careful to limit jurisdiction in the document of appointment. For this reason, also, a copy of the appointment of the vicar general should be brought to the notice of all the clergy of the diocese. They are not only in reason but in law entitled to know what powers diocesan officials possess. What is said of the vicar general in this respect is true of all others claiming to possess diocesan authority or jurisdiction, the bishop alone excepted, for the law sufficiently proclaims the extent of his authority.

18. The present law gathered from Roman decisions says that a vicar general must be a cleric at least twenty-five years of age, and a doctor or licentiate of law or at least of theology in some pontifical university. The Sacred Congregation of Bishops and Regulars has several times decided that a bishop cannot choose a vicar general among the diocesan clergy but must select a cleric from another diocese, and Bouix says a papal dispensation is required before a bishop may appoint a diocesan his vicar general. It is also the common law that no parish priest or rector of the seminary can be the vicar general, these offices being incompatible. It is interesting to note that the schemata of the Vatican council contained a distinct chapter on the vicar general—this being the first time the office is treated *ex professo* in any general council. The schema proposed "that the vicar general should be a priest,

not less than thirty years of age, a doctor or licentiate in canon law, and not the canon penitentiary, a parish priest or anyone having the care of souls, nor the brother or nephew of the bishop."

Up to the present time in the United States the vicar general has been chosen usually from the diocesan clergy and not unfrequently parish priests have been selected. The necessary qualification of the doctorate or knowledge of law seems to have been overlooked in many cases and the vicar general chosen for such considerations as long, meritorious service, friendship and the prominence of one's congregation. Whether this has been to the advantage of the church and the better administration of justice seems very doubtful. The vicar general, like a bishop, is supposed to be chosen for his personal qualifications, chief among which are a knowledge of canon law, fearlessness in decision and prudence in action. Ferraris, *verbo Vicarii Generalis*, *art. 1*, *n. 38*, quoting decisions of the Sacred Congregation, concludes that if recourse is had to the Sacred Congregation of Bishops and Regulars against a bishop not having a canonist as his vicar general, the order is generally sent that the bishop must have a doctor as his vicar general. However, when the bishop himself is a jurist the S. Congregation sometimes permits him to have one not a doctor if he is otherwise fit.

19. Every bishop of a residential see may appoint a vicar general. He need seek neither the consent nor the advice of his chapter or consultors in the matter. The administrator of a vacant see, after the confirmation of his own appointment by

the Holy See, may appoint a vicar general, because he then has ordinary jurisdiction. The administrator of a diocese whose bishop is still living seems to have the same right, if he is the sole administrator; if he is not sole administrator there could easily be a clashing of authority between the vicar general of the administrator and the vicar general of the absent bishop.

The Holy See may and in fact sometimes does appoint a vicar general for a bishop, especially when the bishop alone cannot administer his diocese and nevertheless neglects appointing a vicar general. This appointment by the Holy See is generally made by asking the bishop to send the Holy See an appointment of a vicar general signed by the bishop, but with the name of the appointee left blank. The Holy See then chooses the person, fills in the name and sends the vicar general into the diocese. The bishop has no power without the consent of the Holy See to remove a vicar general thus constituted. However, in such a case the faculties of the vicar general expire with the death of the bishop.

20. At times also the Holy See appoints a vicar apostolic to rule a diocese instead of its bishop. In such cases the exercise of all jurisdiction belongs to the vicar and the bishop may not interfere in any way. Various causes render necessary the appointment of such a vicar, but they may be reduced to this one; namely, when there is grave reason, either with or without the fault of the bishop, that he should be removed from the administration of the diocese, and if at the same time the cause is not such as to entail deposition and again for other reasons it

is not expedient to appoint a coadjutor bishop. (*Confer Roman Court by Baart, page 323.*) When a vicar apostolic is in charge the bishop can have no vicar general. The appointment of a vicar apostolic is made direct by an apostolic brief or a letter of the Sacred Congregation of Bishops and Regulars, or in the United States, of the Propaganda.

21. It is controverted whether a bishop is obliged to appoint a vicar general. The Roman Rota holds that he is not strictly obliged if the bishop resides in his own diocese constantly. In practice, if recourse is had to the Holy See by the diocesans and a showing made that a vicar general was formerly appointed in the diocese, the Holy See will order an appointment. On the other hand in a small or very poor diocese a dispensation is sometimes granted, and even renewed, freeing the bishop from the necessity of constituting a vicar general. It is also controverted whether a bishop as a rule can have several vicars general. When there are different rites in his diocese such as the Latin and the Greek, the bishop not only may but should appoint a vicar general for each rite. Again when a bishop rules two dioceses he may have a vicar general for each, especially if the dioceses are distant. While there can be no "honorary vicars general" still where such is the custom it seems more probable that two vicars general may be appointed, each having jurisdiction *in solidum* and both being equal. In such case, as in the case of one vicar general, they must both reside in the episcopal city. (*Communis doctorum.*) While each retains full jurisdiction, still as a matter of convenience they may divide work. However, accord-

ing to a declaration of the Sacred Propaganda dated Dec. 22, 1896, it is certain that a bishop in the United States can sub-delegate the extraordinary faculties contained in schedules D and E to only one vicar general. Formerly several vicars general were recognized in these faculties, but the Holy Office ordered a change so that only one is now recognized.

22. The vicarship general is a dignity, for it is an office to which precedence with jurisdiction is annexed. But it is not a prelacy, because the vicar general exercises government not in his own name, but in that of another. His jurisdiction expires by his own resignation or that of the bishop, by the death, transfer, suspension or deposition of the bishop, or by the revocation of his appointment by the bishop. This revocation, while always valid, is not licit except for grave and just cause, which being absent the Holy See may re-instate the vicar general. In the diocese over which he has jurisdiction the vicar general takes precedence next after the bishop.

23. The vicar general is entitled *de jure communi* to a support which the bishop must pay from his own salary or income. The bishop is also responsible for the excesses or mistakes of his vicar general in official acts, especially if his bad character or ignorance is or should be known to the bishop. For his official misdeeds, according to a decision of the Sacred Congregation of the Council, the metropolitan even in the first instance is the competent judge, but for his private evil deeds the bishop may punish his vicar general.

24. By virtue of his office the vicar general can as a rule do what the bishop can do *de jure ordinario;*

but at present both the law and the will of the bishop usually require that a special mandate be given the vicar general in order that he may act validly in certain cases. A vicar general in the United States appointed orally or without a special mandate may rightly concur with all the pastors of the diocese in the administration of the sacraments and in preaching. Where the decree "Tametsi" is in vogue he, being the ordinary, may validly assist at marriages. He may hear confessions, absolve from cases reserved to the ordinary, (not to the bishop solely) and also give other priests faculties to do so. He can appoint a delegate for certain cases, dispense with all proclamations of the banns, compel pastors of parishes to fulfill their care of souls even by ordering them to accept assistants.

25. A special mandate is required by the vicar general, even though he be a bishop, before he may grant dimissory letters for the reception of orders (except when the bishop is in distant countries and will not return for a long time.) A special mandate is also required for appointments to parishes or benefices, as well as for erecting, dividing or uniting the same. Neither can he give another bishop permission to exercise pontificalia in the diocese. Further he cannot visit the diocese, call a synod, take cognizance of the graver crimes of ecclesiastics, nor depose them from benefice, parish or order; nor in general can he dispose of matters of a grave character. However all these things he may do by a special mandate given either once for all or for the individual case.

Usually and rightly a bishop, even though he has

a bishop for vicar general, reserves for himself certain powers, such as conferring benefices and parishes, admitting priests into the diocese or granting exeats to leave it, blessing the holy oils, giving confirmation, consecrating churches, conferring holy orders, granting other bishops permission to use pontificalia in his diocese. In case he wishes the vicar general to act he gives him special jurisdiction for the individual case, either verbally or by note.

26. In those matters in which the bishop acts as the delegate by law of the Holy See he usually gives his vicar general jurisdiction by a special mandate. In the United States and other countries where bishops receive extraordinary faculties from the Holy See, the bishop by special mandate, *in quantum possumus*, gives his vicar general the faculties in Form I and Facultates Extraordinariæ C. But he should not include the Facultates Extraordinariæ D and E in any general mandate. Neither can he subdelegate these faculties to two vicars general nor to a chancellor. The answer of the Propaganda Dec. 22, 1896, says that a bishop should nominate a vicar general in curia and sub-delegate these faculties to him only, and, if necessary, also to two or three priests in the remote part of the diocese, but only for a certain number of urgent cases in which access cannot be had to the bishop. For safety these subdelegations should be in writing and state the date whereon the bishop himself received the faculties from the Holy See.

27. Not only to prevent confusion, but also for safety and lest his authority be disputed, the vicar general should be appointed in writing and this doc-

ument be recorded in the chancery and made known to the diocesan clergy. It is presumed that a vicar general has jurisdiction in the matters mentioned above in number 24; but he is obliged to publish his authority for claiming jurisdiction in the matters requiring a special mandate. Herewith is given a form for the appointment of a vicar general. If two vicars general are appointed, exactly the same document, changing only the name, should be sent to each, for they must be appointed *in solidum*. Each may then receive instructions as to the division of work. It seems more prudent to give the vicar general a full commission, and then, if the bishop desires the vicar not to interfere in certain matters, simply to so inform him. In case the bishop is then called away suddenly there will be no doubt of the jurisdiction of the vicar general.

"N— Dei et Apostolicæ Sedis gratia Episcopus N.

Dilecto Nobis in Christo N—, salutem in Domino.

Cum onus Episcopalis ministerii tanti sit momenti, ut etiam ipsis angelicis humeris formidandum videatur, operæ pretium duximus in administratione Episcopatus N— quem Sanctissimus Dominus N— Papa nostræ imbecillitati superimposuit, vicarium idoneum advocare, qui partem sollicitudinis nostræ in se assumendo, pondus quo ultra vires premimur alleviet. Hinc aciem nostræ mentis in personam tuam dirigentes, et de fidelitate, probitate, prudentia, scientia et experientia, aliisque quibus polles virtutibus plene confisi, Te nostrum Vicarium Generalem ad nostrum beneplacitum in dicto nostro Episcopatu N. in spiritualibus et temporalibus tenore præsentium facimus, constituimus et deputamus, dantes et concedentes Tibi: 1° potestatem officii ordinariam, et 2° mandatum speciale ecclesias, altaria et oratoria aedificata,

et aedificanda et divino cultui deputata benedicendi, eaque polluta (non tamen consecrata) reconciliandi; a casibus quibuscunque Nobis reservatis absolvendi et aliis confessariis ut ab iisdem absolvere possint facultatem delegandi, publicas, et solemnes pœnitentias injungendi, letteras commendatitias et testimoniales concedendi, et insuper dimissorias ad quoscunque ordines dandi et super interstitiis dispensandi Nobis tamen a Diœcesi absentibus; causas matrimoniales cognoscendi et decidendi, procurationem visitationis, synodaticum seu cathedraticum aliasque consuetas pecunias, et charitativum subsidium, ut juris erit, exigendi; 3° mandatum item speciale, (Nobis tamen prius consultis nisi urgeat moralis necessitas) novas parochias et missiones erigendi et erectas collapsasque reficiendi, ad parochias vacantes concursum indicendi et economos tempore vacationis instituendi, coadjutores rectoribus parochiarum imperitis et infirmis dandi; causas omnes ad forum nostrum tam de jure quam ex consuetudine spectantes et pertinentes, etiamsi feudales et hæresis sint, cognoscendi et decidendi; edicta nostra exequendi, censuras fulminandi et ab ordine, officiis, administratione et beneficiis, prout juris erit, suspendendi, privandi, destituendi et deponendi; inquisitos, excommunicatos a canone, suspensos et interdictos a jure in casibus Nobis permissis absolvendi; causas criminales cognoscendi et decidendi, pias voluntates exequendi, in alienatione bonorum ecclesiarum et locorum piorum ad formam sacrorum canonum auctoritatem præstandi et decreta interponendi; loca pia etiam exempta et monasteria monialium visitandi, literas apostolicas Nobis seu vicario nostro directas et dirigendas aperiendi et (nisi industria personæ eligatur) exequendi; jurisdictionem in regulares et exemptos ad formam Sac. Concil. Tridentini, constitutionum Apost. et decretorum Sac. Cong. exercendi, confessarios tum seculares tum regulares examinandi et ad tempus approbandi et facultatem eis concessam ex causa

revocandi, voluntatem puellarum habitum religionis suscipere sive profiteri volentium (Nobis impeditis aut absentibus) explorandi, licentias pro ingressu in claustrum monialium, pro rebus tantum necessariis, officialibus, artificibus et colonis concedendi.

4° Ad haec, communicamus Tibi cum facultate sub-delegandi in quantum ordo permittit et Nos possumus, Facultates in Forma I a Sancta Sede Nobis concessas die——mensis——18—, et Facultates Extraordinarias C, ab eadem Sancta Sede die——mensis——18—, Nobis concessas. Facultatem insuper concedimus unum vel plures vicarios, Nobis absentibus, in casu alicujus necessitatis cum eadem vel minori auctoritate nomine nostro ad tempus substituendi, et cetera exercendi quæ ad officium vicariatus noscuntur pertinere. Volumus autem quod in Vicarium nostrum generalem omnes Nobis in episcopatu et jurisdictione subjecti Te recognoscant, recipiant et admittant, atque ut par est, Tibi obediant. Si quis vero inobediens fuerit condigna poena feriatur.

In quorum fidem nomen nostrum et sigillum imposuimus.

Datum ——die——mensis—— A. D. 189—.

[L. S.] N. N. Episcopus N.

N. N. Secretarius."

If the bishop has already appointed his chancellor this official should sign the above document instead of the bishop's secretary.

28. If an archbishop with suffragans is to appoint a vicar general, with a change of names, the same form as that used by a bishop may be employed. But because of his appellate jurisdiction the following should be inserted before the 4° of the above form:

"Ut cuncta autem adimpleantur ex omni parte quæ pertinent ad primum ordinem hierarchicum et

ecclesiam metropolitanam, necnon ad dignitatem nostram et jurisdictionem, Tibi etiam speciale mandatum damus et concedimus causas criminales et civiles, matrimoniales et beneficiales et quascunque alias tam principales quam incidentes et per appellationem devolutas et in posterum devolvendas, et quæ ad dictam nostram ecclesiam pertinebunt de jure vel consuetudine, audiendi et de ipsis cognoscendi; et cetera omnia quæ sunt episcopalis et archiepiscopalis jurisdictionis exercendi et terminandi."

29. When the vicar general is elected he must take possession of his office regularly. Where there is a cathedral chaper, at an appointed time the letters of appointment are read before it by a notary or the chancellor, and a record of the matter is made on the letters themselves and filed also in the chancery office.[1] This form may be used:

"In nomine Domini, Amen. Reverendus Dominus N. possessionem cepit sui officii vicariatus, mediante mandato episcopi (vel archiepiscopi) præsentibus omnibus (vel——) dominis canonicis et dignitatibus capituli hujus cathedralis ecclesiæ; die—— mense—— anno——hora——. In quorum fidem etc. Datum in urbe——die——mense——anno——. Ego N. N. Notarius (vel cancellarius) curiæ episcopalis."

If there is no chapter then a record may be made in the chancery office and a notice be sent by mail to the clergy of the diocese. A similar form may be used, with proper changes, for recording the taking possession of other ecclesiastical offices; for by common law every official must take possession regularly.

30. When the vicar general desires to be absent or for another reason wishes to sub-delegate he may use this form:

"In the name of Christ, Amen. N., N., vicar general in spiritual and temporal matters of the Most Reverend N. N., the Bishop of N—, wishing to be absent from the city of N—, for the purpose of (here state the reason), in order that justice may be administered in those matters which pertain to episcopal government, has substituted, deputed and placed in his stead until his return the Reverend N. N. with the same authority which he himself possesses. Hoc et omni meliori modo.

Dated———. Ego, N. N. Vicar General.

In the presence of N— and N—, Witnesses.

N. N. Chancellor."

This form is to be placed in the chancery in original or copy.

31. When the Holy See appoints a vicar apostolic for a vacant diocese at times it uses the form of brief, which it is not necessary to quote, since it is beyond the scope of this work. But when the Sacred Congregation makes the appointment, the letter is couched in about these words:

"To the Reverend N. N. Vicar Apostolic. Reverend Sir: His Holiness, for reasons known to his sublime prudence, has deigned to appoint you with the title of vicar apostolic to the government of the vacant episcopal see (church) of N—, with all the necessary and opportune usual faculties, emoluments, and prerogatives except those of conferring benefices and granting dimissory letters to those to be promoted to orders. Fail not, therefore, to correspond with due application to the favor which His Holiness has thus deigned to confer, and may God there prosper you.

Rome——. Cardinal———.

M—, Archbishop of ——, Secretary."

32. When, however, a vicar apostolic is appointed

by the Holy See, not during a vacancy, but in order to suspend the jurisdiction of the bishop, the Sacred Congregation uses letters in about this form:

"To the Rev. N. N. Vicar Apostolic. Reverend Sir: An order having been made by His Holiness that a vicar apostolic be sent for the government of the see of——, it was resolved to depute you to the exercise of this charge, with the provision of 200 scudi a year besides the emoluments of the office, expenses going and returning and proper habitation in the episcopal palace, or somewhere else at the expense of the bishop's manse; communicating to you for such purpose by means of these presents all the faculties usually granted to vicars apostolic, except only the conferring of benefices and the granting of dimissory letters; signifying to you also to take possession as soon as possible of this charge. And may God prosper you."

The following is the letter sent to the bishop in such cases:

"His Holiness having resolved to depute a vicar apostolic to the government of your see for causes known to His Holiness, I make this known to Your Lordship in order that you may conform properly to the resolution of His Holiness, being content to leave to N. N. Dignitary of N—, appointed to that charge the government of the said see.

Following is the letter sent to the chapter in such cases.

"His Holiness, Pope N—, having resolved, for reasons known to himself, to depute a vicar apostolic to the government of your church and having for that purpose chosen the person of N. N. I inform you thereof and notify you to the end that you may give him possession of it, and that you may show him

proper obedience. This much do and may God prosper you. Dated Rome, etc."

Each of these letters is signed by the Cardinal Prefect and by the secretary of the Congregation and properly sealed and addressed.

When a vicar apostolic receives faculties without the above exceptions he may confer benefices and grant dimissory letters. But these rights are generally reserved from him in the letters of appointment. If the Holy See has not specially reserved these rights to itself and still reserved them from the vicar, then they remain, not with the vicar, but with the bishop. In either case whether the Holy See or the bishop confers the benefices, particularly parishes, the vicar apostolic attends to the concursus and announces the more worthy candidate to the bishop or to the Holy See as required. It is the duty of the vicar also to attend to the examination of the candidates for orders in either case.

CHAPTER III.

APPOINTMENT OF VICAR CAPITULAR OR ADMINISTRATOR.

33. As soon as an episcopal see becomes vacant by the death, resignation or transfer of the bishop, all his power, both ordinary and by law delegated, (not however, that specially delegated) devolves on the chapter of the cathedral church and from it exclusively and irrevocably unto the one vicar capitular who must be chosen by the said chapter within eight days from the time of certain knowledge of a vacancy. In case of supposed vacancy the Holy See should be consulted, especially if the bishop has appointed a vicar general. Certain knowledge of the vacancy is required, not merely presumptive. This certainty may be founded on the announcement of the transfer in consistory or on a letter of the Sacred Congregation. The chapter cannot reserve any jurisdiction to itself, nor remove the vicar capitular once he is appointed. According to the Council of Trent, the chapter must also appoint one or more economes from itself to administer the temporalities of the see during the vacancy. During the time from the vacancy to the selection of a vicar capitular, the chapter, as a collegiate body, has jurisdiction over the whole diocese.

34. In the election of a vicar capitular the first

dignitary presides. The voting should be secret. (*S. Cong. Conc. in Melevitana, 23 Nov. 1697. Monacelli, Tom. I, Tit. I. Ferraris, verbo Vicario Cap. Art. 1, n. 15.*) Pelligrinus says an open ballot is null. A majority vote will elect, but this majority must be given at the time of the election when the chapter is in collegiate session. The consent of individual members obtained later even in writing will not make valid an election with less than a majority vote obtained during the session. (*Pignatellus Tom. I, Consult. 23, n. 7.*) The same author in *Tom. VI, Consult. 92* shows that an election is vitiated and rendered null if some person competent for the office is overlooked or rejected from the number of candidates.

As to the requisite qualities for the vicarship the law distinctly provides that a doctor or licentiate in canon law or at least in theology shall be chosen and if there is only one in the chapter who has these qualities he must be chosen; if there is one and he is not chosen the election is by that fact null. (*Ferraris l. c. n. 32.*) If there is none with these qualities in the chapter itself then some one outside with proper degrees may be chosen. This holds *a fortiori* in choosing a bishop to fill the vacancy. The same qualities are required in a vicar capitular as in a vicar general. (*Confer Zitelli, App. Juris, pg. 169.*) It should be noted that if the chapter neglects the election of a vicar or defers it beyond the eight days, or if it elects a person without the requisite qualities, the choice of the vicar capitular for that time devolves upon the metropolitan, or if the metropolitan see is vacant then upon the senior suffragan. The chapter

may also otherwise be punished, if the case is aggravated. The vicar capitular appoints his own substitute in case of absence. The chapter has no authority in the matter. If it occurs legally that one not a canonist is elected vicar, the law requires him at once to choose a consultor who is a canonist; but the chapter cannot select him.

35. The power of the vicar capitular is greater than that of the vicar general of a bishop, for the vicar capitular performs by his ordinary power most of the acts for which the vicar general requires a special mandate. Thus the vicar capitular holds a concursus for vacant parishes, though he does not appoint; after the lapse of a year's vacancy he can hold a synod and can visit the diocese a year after the last visitation. He can give dimissory letters within the first year of vacancy for tonsure and also for orders to those obliged to receive them; but he can neither admit priests into the diocese nor grant exeats, nor, in a word, materially change the condition of the vacant see. Hence he cannot confer benefices or parishes, (he appoints temporary administrators); he cannot alienate property or transfer it from church to church nor begin suits. For other information works on law should be consulted.

The authority of the vicar capitular ceases when the new bishop presents his letters of appointment, or when the Holy See provides an administrator to govern, either because of the long vacancy, strife in the chapter, or because the chapter elected an unfit person for vicar. Following is the form to be used by the chapter in appointing its vicar capitular:

"Nos, Archidiaconus, canonici et capitulum cathe-

dralis ecclesiæ N— sede vacante per mortem bonæ memoriæ N— Episcopi.

Admodum Revdo D. N—, J. U. Doctori, salutem in Domino.

Cum ex sacrorum canonum dispositione cathedralium ecclesiarum capitula in locum deficientium episcoporum, (præsertim si ex humanis eripi contigerit) subrogentur, eisque in spiritualibus et temporalibus succedant, eorum munus fit, viduatis ecclesiis ita consulere ut ministrorum solertia atque diligentia incommoda minime sentire permittantur. Ne igitur supradicta ecclesia culpa nostra aliquid detrimenti patiatur, nos canonicis sanctionibus et S. Concilii Trid. decretis ut par est obtemperando, vocatis omnibus et singulis canonicis, intra tempus octo dierum a præfato concilio constitutum, ad vicarium qui vices nostras sustinere debeat deputandum, congregatisque his qui debuerunt, potuerunt et voluerunt interesse, habitis capitulariter secretisque suffragiis sive votis omnium seu majoris partis interessentium, et ut permittitur congregatorum, Te Advocatum Reverendum D. N—, J. U. D. supradictum, de cujus probitate, scientia et sollicitudine plurimum in Domino confidimus, Generalem in spiritualibus et temporalibus Vicarium nostrum in prædicta ecclesia cathedrali, civitate et diœcesi tenore præsentium deputamus, facimus, creamus et constituimus pro tempore sedis vacantis; cum omnibus et singulis facultatibus, privilegiis, honoribus, oneribus, emolumentis, præeminentiis et prærogativis ad hujusmodi munus exercendum debitis, necessariis et opportunis.

Dantes Tibi plenam et liberam potestatem omnia et singula exercendi, quæ capitulo sede vacante in utroque foro a jure permittuntur, et proinde causas omnes tam civiles quam criminales et mixtas etiam hæresis et matrimoniales audiendi, cognoscendi, terminandi ac decidendi cum facultate excommunicationem aliasque ecclesiasticas censuras et pœnas

etiam pro ecclesiarum immunitate et libertate tuenda, ferendi et infligendi, resignationes beneficiorum cum causa recipiendi (et præsentatos ad beneficia juris-patronatus, si quæ sint, instituendi): concursus ad parochiales vacantes indicendi et magis dignum ex approbatis eligendi, ac dimissorias ad ordines post annum, et infra annum coarctatis ad formam Conc. Trid. concedendi, et super interstitiis dispensandi; necnon ea omnia faciendi, mandandi et exequendi quæ nos facere, mandare vel exequi possumus, etiamsi requirerent speciale mandatum, (si vicarius deputatus non esset doctor, addatur) cum voto tamen consultoris idonei J. U. Doctoris, Tibi benevisi in sententiando et procedendo ad actus quoscunque irrevocabiles et qui consilio videbuntur indigere.

Præcipimus itaque universo clero hujus civitatis et diœcesis, aliisque hujus ecclesiæ jurisdictioni subjectis, ut Te in Vicarium nostrum Generalem, ut præmittitur, recipiant, Tibique tanquam tali in omnibus pareant et obediant; dantes Tibi voces et vices nostras, contradictores et rebelles pœnis et censuris ecclesiasticis compescendi. In quorum fidem præsentes scribi jussimus per infrascriptum nostræ curiæ notarium, et manu propria subscripsimus, sigilloque capituli jussimus muniri. Datum. &c."

The document is to be signed by all the chapter and witnessed by the notary.

36. In dioceses where there are no cathedral chapters the Holy See appoints an administrator to govern during the vacancy. But provision is made meanwhile in order that jurisdiction may not lapse. According to the Second Plenary Council of Baltimore n. 96-99, which is still in force, every bishop can communicate to his priests certain faculties which he receives from the Holy See. These are the Facultates Ordinariæ Form I, and in the provinces

of Baltimore and Philadelphia, part of the Extraordinary Faculties C; not those requiring episcopal character. The bishop is instructed to appoint some priest of his diocese as administrator with these faculties, so that pending the vacancy caused by death he may take the place of the bishop until the Holy See shall dispose otherwise. The one appointed administrator is obliged, as soon as possible, to inform the Holy See regarding the death of the bishop and his own appointment. The appointment of the administrator by the bishop is only provisional, i. e. until the Holy See provides. As much as possible the administrator should be possessed of the qualities required in a vicar capitular. If recourse is had to Rome against the bishop's appointee and good reasons given against him the matter will receive proper attention. Usually when the Sacred Propaganda confirms the appointment a letter of instruction is also sent. It should be noted that the usual extraordinary faculties received by the bishop do not now lapse with his death. (*Cf. p. 241. below.*)

37. Should the bishop have omitted to appoint in writing an administrator, the metropolitan, or the senior suffragan if the metropolitan see is concerned, will appoint an administrator provisionally. When a see becomes vacant by the resignation or the transfer of the bishop, the Propaganda when announcing such an event usually also makes provision regarding an administrator. However, if none is made then the metropolitan, or the senior suffragan as above, makes a provisional appointment. It is worthy of note that the schema of the Vatican Council intended that where there are no chapters the vicar general

of the late bishop should succeed ipso facto to the administratorship as vicar capitular; but only provisionally until the Holy See should provide. This is the pontifical provision for missionary countries which have no special law on the subject. It is certain that the administrator for validity must be appointed in writing. No priest of the diocese need recognize an oral appointment. The appointment should also be made known through the regular channels. As a matter of prudence the bishop may draw up the appointment at any time, and, if necessary, from time to time he may change it like his last will. But to preclude complications the appointment should be published before the bishop's death. It is not a question of the last will of the bishop, but of jurisdiction which ceases with death. If the unpublished appointment were disputed when made known after death, serious complications might arise. The authority to adjust the matter is respectively the metropolitan or the senior suffragan.

38. The administrator cannot change the condition of the diocese, cannot admit or excardinate priests, cannot appoint to parishes, except provisionally, nor encumber with debts nor alienate church property. He has the usual powers and faculties of a vicar capitular, besides the unexpired faculties of the late bishop, except only the personal ones. It is worthy of special note that if an administrator needs immediately some extraordinary faculty such as those of Forms D and E, he can obtain it by applying to the Apostolic Delegation in Washington. The Delegation has for use in necessary circumstances all the extraordinary faculties given by the Holy See to the

bishops of the United States. The following form may be used by the bishop in appointing an administrator:

"N—Dei et Apostolicæ Sedis gratia Episcopus N. Dilecto Nobis in Christo N. N. salutem in Domino.

Cum ex mente Sanctæ Sedis et Secundi Plenarii Concilii Baltimorensis decretis oporteat Episcopum moriturum suæ diœcesi ita consulere ut jurisdictio in spiritualibus et temporalibus ad regimen ecclesiæ necessaria in aliquo sacerdote idoneo remaneat, qui post obitum episcopi eam exerceat; Nos, igitur, memores conditionis nostræ infirmæ, supradictis præscriptis obtemperantes, Te, de cujus scientia, probitate, solicitudine et fidelitate plurimum in Domino confidimus, administratorem in spiritualibus et temporalibus in prædicta N— ecclesia cathedrali, civitate et diœcesi tenore præsentium deputamus, facimus, creamus, et constituimus, donec Apostolica Sedes, certior facta, alio modo provideat; cum omnibus et singulis facultatibus, privilegiis, honoribus, oneribus, emolumentis, præeminentiis et prærogativis ad hujusmodi munus exercendum debitis, solitis, necessariis et opportunis.

In quorum fidem præsentes scribi jussimus per infrascriptum nostræ curiæ notarium et manu propria subscripsimus sigilloque nostro muniri jussimus. Datum &c.

N. N. Notarius. [L. S.] N. Episcopus N."

CHAPTER IV.

APPOINTMENT OF CANONS AND CONSULTORS.

39. Every bishop, even while the Apostles were alive, gathered around himself a clergy to help in his sacred work. This body, during the first three centuries, nearly everywhere consisted of twelve priests and seven deacons, the priests to signify the twelve apostles, the deacons to represent the seven deacons mentioned in the Acts of the Apostles. These twelve priests and seven deacons constituted the senate of the church or diocese and the council of the bishop. Sub-deacons and inferior ministers were attached to this body for service and from them the deacons and priests were chosen to fill vacancies, though until chosen they belonged not to the senate or council. (*Conf. Bouix, De Capitulis, page 3.*) Without this senate, the Fourth Council of Carthage, Canon 23 says, no bishop should decide any important matter, otherwise his sentence would be null. During the first five centuries, according to Tomassin, *Vet. et Nov. Ecc. Disc. Pars I, lib. 3, c. 7*, there was no common life among the clergy of the cathedral, but nevertheless they formed with the bishop one body and participated with him in the care of the diocese. To this body of clergy succeeded cathedral chapters, or the college of canons belonging to the cathedral.

40. Chapters are defined: Colleges of clerics who, established under a prelate, make one body and are devoted by the church to public divine worship. Chapters are either cathedral or collegiate. Cathedral chapters are those established in a church to which the bishop's see is affixed, for the purpose of assisting the bishop in the government of his diocese and supplying his place during a vacancy in the see. (*Cf. Concil. Trid. sess. 24, c. 12, 15, de ref.*) Collegiate chapters are those established in other than cathedral churches, and hence they have no part whatever in the administration of the diocese. Chapters in our day can be established only by the Pope whether they be cathedral or only collegiate. Bishops have not the power according to all canonists.

41. A canonry is defined: A spiritual right which comes from an election or reception of a person as a canon. This right consists, firstly, in entitling the canon to a seat or stall in the choir and a voice in the chapter-meeting; secondly, in entitling him to a prebend or portion of the canonical revenues as soon as possible. A prebend, therefore, conveys more than a canonry. A prebendary is a canon or member of a chapter who besides the other rights of a canon receives an annual support through such office. Formerly the bishop and his chapter in common received and partook of the revenues of the church; but later a division was made between the bishop and the chapter, and a portion of the chapter revenues was assigned to individual canons, which portion was called a prebend. A prebend is considered in law more honorable than a chaplaincy or beneficial cure, and hence in odious

matters a canonry or prebend does not come under the name of benefice, but in favorable matters both are included.

42. The bishop is to provide that the canons have prebends sufficient for their support. Hence, in the months not reserved to the Holy See, with the consent of the chapter, the bishop can unite simple benefices to a poor and insufficient prebend. A benefice in general is defined: A perpetual right of receiving income from the goods of the church on account of some spiritual duty authorized by the church and to be personally performed. A simple benefice is one to which the care of souls is not attached, nor any jurisdiction, precedence or administration. Such would be the obligation of saying mass twice a week for a certain intention and receiving therefor the income of a certain property set apart by church authority for that purpose. Such a simple benefice might be united to a cathedral prebend to make its revenues sufficient for the support of the canon prebendary. But besides prebends a third part of the chapter revenues is set apart for daily distribution to all the canons, whether they have prebends or not, for attendance at choir. The bishop is to determine how this distribution shall be made. (*Conf. Con. Trid. sess. 21, cap. 3, de ref.*)

43. If the cathedral chapter is considered as the senate and born council of the bishop, undoubtedly the bishop is its head and most noble part; but if considered as a corporate body, having its own rights and duties, the bishop is neither head nor part of it. Its head is then its chief canon, generally to-day the First Dignitary. If the vicar general is also a canon

he belongs to the chapter, otherwise not. In choir, he takes his place as a canon, not having precedence because of the vicarship. The number of canons in cathedral churches is not determined by law, but depends on the judgment of the Pope, although at least three are required for the establishment and two for the continuance of the chapter. If the number of canons has been precisely determined, either by the Pope, immemorable custom, or by the bishop and chapter under oath not to increase the number, then the number can be increased only by the Pope. Outside of these cases the bishop with the chapter can increase the number if sufficient support is provided.

A canon once appointed is irremovable by law; hence if unwilling he cannot be removed except by judicial sentence after canonical trial.

44. As a rule to-day the dignitaries of a cathedral also belong to its chapter. Formerly they did not, although they had precedence of the canons. Whether or not they are members of the chapter to-day depends on their institution. A dignity formerly was defined a beneficial title having annexed jurisdiction and precedence. To-day, while jurisdiction has been withdrawn, nevertheless what offices formerly were dignities still retain the name and precedence. Such are the arch-deaconate and the arch-presbyterate. By law, then, the arch-deacon, the arch-priest, and also the head of the chapter, whether he is called the dean or by some other name, are dignitaries. Often the arch-deacon is also dean of the chapter. Anyone else in the chapter claiming dignity must make proof of it. These dignitaries

always take precedence in choir, in processions and other acts out of chapter meeting; if they belong to the chapter they precede also in capitular acts. The arch-deacon is the first dignitary, and once appointed is irremovable, although in the province of Rheims in France by special concession of the Holy See vicars general who are removable are called arch-deacons. (*Confer Craisson, Manuale, n. 1197.*) The same qualifications as to birth, university degree, morals, are required in these dignitaries as in a vicar general. Usually in every cathedral chapter there are prebends for a canon theologian, who teaches Holy Scripture, for a canon penitentiary who hears confessions, and for other officers, none of whom, however, have precedence.

45. According to the fourth rule of the apostolic chancery the first dignity of all cathedral churches is reserved to the Pope. In some countries, as in France, this right is not enforced, as is apparent from the councils of Avignon and Rheims held in 1849, in which the bishops are said to confer also the first dignity of their cathedral churches. It is considered certain to-day that the conferring of canonries and prebends in cathedral churches regularly pertains to the bishop and the chapter together. (*Confer Bouix, De Capitulis, page 224.*) By common law the right of choosing canons in a collegiate church belongs to its chapter, the institution of the canons depending on the bishop. However, much depends on custom and the statutes of individual chapters, which, together with approved authors, should be consulted also regarding the various rights and duties of the canons. Since the council of Trent

the bishop appoints the vicar who has charge of the parish work of the cathedral even though the cathedral has a chapter. The same is often true also of the canon theologian and the canon penitentiary.

46. When properly appointed the appointee must take possession of his canonry or dignity in a capitular manner, that is, the chapter must be called together by the sound of the bell, and the newly appointed must in the presence of the chapter take his proper seat or stall. Otherwise he is not in legal possession. (*Confer Ferraris, Canonicatus, Art. II, 15.*) Further it is required that the canon within two months make a profession of faith and promise upon oath obedience to the church of Rome. This profession and oath are to be taken before the bishop or his vicar general, and also must be repeated in the chapter. (*Confer Conc. Trid. Sess. 24, c. 12, de ref.*) This profession and oath must be made personally not by procurator. Its omission deprives the appointee of all the revenues of his canonry, but not of other rights, provided he has taken possession legally. The mere appointment, even if publicly known, will not suffice.

No special form is required, either by canon law or the council of Trent for conferring the theological and penitentiary prebend, but in Italy and the adjacent islands by order of Pope Benedict XIII both are given through concursus. The canon theologian must be a master in theology, and the canon penitentiary a doctor or licentiate in theology or canon law, and at least forty years of age unless necessity or utility demands a younger man.

47. The Sacred Congregation of the Propaganda,

according to Zitelli *Appar. Juris Ecc. page 148*, has not ceased admonishing the bishops subject to its jurisdiction to establish cathedral chapters. And if the circumstances of times and places render this impossible it insists on at least the establishment of a council to take the place of the chapter temporarily.

The Third Plenary Council of Baltimore, while claiming that the present state of affairs would not permit the establishment of chapters, decreed in their place certain diocesan consultors. Six or at least four priests noted for piety, integrity, zeal for souls, knowledge, prudence, experience and observance of law, are to be chosen by each bishop as diocesan consultors. One-half of these the bishop himself chooses. He also chooses the other half, but only after the priests of the diocese have each suggested nine names, or three for each position. It is easily seen that such a proposition by the clergy is entirely nugatory, for according to the Council, n. 19, the bishop would thus have any number of names to choose from and is not confined to those receiving the highest vote, nor in fact is he precluded from selecting a man who received but one vote. This proposition by the clergy is rendered even more nugatory when a vote is taken not in synod but by letters sent by the individual priests to the bishop's office. While it might have been intended that a vote should be taken in synod and that the bishop should recognize the wish of the clergy by selecting those three for consultors for whom most priests had voted, still practice has developed something very different.

The term for which consultors are chosen is three

years, not during life. This short term also has proved detrimental, and the experience of the fourteen years elapsed since the council has shown that in most dioceses the establishment of consultors has by no means satisfied the want of cathedral chapters. Moreover, is not the church in the United States in much better condition than in England and other countries, where nevertheless cathedral chapters are found?

48. The consultors are chosen *ad triennium*, for three years, and therefore their term expires by limitation exactly three years from the date of their apppointment. The law itself confirms this by making one exception: "In case the three years' term happens to expire during a vacancy in the episcopal see, then the consultors will remain in office until the advent of the new bishop, who within six months from his consecration is obliged to select new consultors." (No. 21.) Pending a vacancy, the administrator will use the council as should the bishop of the diocese.

During his term of office a consultor is irremovable except for cause; and if justly removed his place is to be filled by the bishop with the advice of the other consultors. The defect of the law as to the practical efficiency of the consultor seems to be, that if outspoken in meeting or opposed to some imprudent or illegal act of the bishop, the consultor can be dropped at the expiration of his term; thereby defeating one of the chief objects intended by establishing cathedral chapters.

49. As a vicar general may be a member of the cathedral chapter, so also it seems he may be a diocesan

consultor. It is true he is the *consultor natus* of the bishop and forms one tribunal with him; but this does not seem to render the two positions incompatible. In fact in 1886 the Sacred Propaganda replied to an inquiry that "vicars general may be consultors, provided they are in a minority, i. e., if there are two vicars general there must be at least three other priests consultors." (*See note p. 50 below.*)

The consultors will meet at the call of the bishop, who according to the law will summon them four times or at least twice a year at stated times and also whenever business requires special meetings. The advice of the consultors must be given as a body, *collegialiter*, and, whenever the consultors so wish, even by secret vote. Every consultor must be summoned to the meeting. Proper records of the business transacted should also be kept, for which purpose one of the consultors should be appointed secretary to the body. Neither should any but the consultors be present at their meetings, as is the rule for chapters. An illegally appointed consultor is not competent; and, because of their position in the diocese and the necessity of obtaining their consent in certain business matters, it is certain that their appointment must officially be made known to the clergy of the diocese. Each consultor, as in the case of canons, must make a profession of faith, or at least take the oath of office required of everyone in public office in the church. If the proposition of names was made by the clergy through letters, the choice of the bishop should be made known in a similar way. The mere publication of names in a directory, issued outside the diocese, cannot in law be considered an

official publication to the clergy, especially since there is no official directory, and no bishop has jurisdiction outside his own diocese.

50. Before undertaking certain things the bishop is by law obliged to ask the advice of the diocesan consultors, not by interviewing them individually or by asking the opinion of several whom he prefers, but by calling them to meet and give advice as a body, *collegialiter*. The matters for which such advice is necessary are: The calling of a diocesan synod; the dividing of a parish; the giving a parish to a religious community; the appointment of regents for the seminary; the election of a new consultor and synodal examiners; the alienation or mortgaging or permitting indebtedness on church property to any amount over $50 (*Cf. p. 288*); the imposition of a new tax on the diocese for the bishop. The consultors in meeting with the irremovable rectors of the diocese, also have each a vote in proposing names for a new bishop when the see has become vacant. The consultors and the irremovable rectors take precedence of all the other priests of the diocese except the vicar general and Roman prelates; but none of them should be entitled "Very Reverend." When there is a cathedral chapter it ranks immediately after the vicar general.

51. Following is a form for appointing a canon when the appointment rests solely with the bishop:

"N— Episcopus N— Dilecto U. J. Doctori N— familiari clerico nostro loci N—, salutem in Domino.

Grata familiaritatis obsequia, quæ Nobis hactenus impendisti et adhuc solicitis studiis impendere non desistis, necnon litterarum scientia, vitæ ac morum

honestas, aliaque laudabilia probitatis et virtutum merita quibus personam tuam juvari percipimus, Nos inducunt, ut Tibi ad gratias reddamur liberales. Cum itaque canonicatus et præbenda nostræ cathedralis ecclesiæ N—quorum collatio, provisio et omnimoda dispositio ad Nos (hac vice, vel ommittitur si præbendæ omnes ad episcopum pertinent disponendæ) spectare dignoscuntur; et quos quondam N. N., qui extra Romanam curiam de mense N— diem clausit extremum, possedebat, vacaverint et vacent ad præsens: Nos volentes Tibi præmissorum obsequiorum et idoneitatis intuitu gratiam facere specialem, canonicatum et præbendam prædictos sicut præmittitur vacantes cum plenitudine juris canonici ac omnibus suis fructibus, proventibus, juribus et pertinentiis universis, Tibi auctoritate ordinaria tenore præsentium conferimus et de iisdem providemus. Teque coram Nobis personaliter constitutum per (anuli traditionem et) bireti capiti tuo impositionem investimus, et realem, corporalem et actualem possessionem auctoritate nostra per N. N. cui vices nostras committimus immitti mandamus; amoto quolibet alio illicito detentore, recepto prius per Nos et per Te præstito ad sancta Dei evangelia corporali juramento, quod Nobis et successoribus nostris episcopis obediens eris et fidelis sanctæ Matri Ecclesiæ; eisdemque canonicatui et præbendæ ac ipsi ecclesiæ cathedrali secundum ipsius statuta, laudabiles consuetudines et ordinationes deservies et deservire facies in divinis, juraque et libertates prædictorum manutenebis et pro posse defendes, nihilque quod ad dictum canonicatum et præbendam pertinet alienabis, sed alienata et distracta ad jus et proprietatem eorundem reduces et pro viribus reduci procurabis. Quo circa mandamus omnibus Dignitatibus et canonicis Reverendi Capituli, ut Te in fratrem et concanonicum recipiant et stallum in choro locumque et vocem in capitulo tradant et assignent, Teque in talem habeant, tractent et portionem de redditibus

universis, prout habent alii canonici, faciant Tibi responderi; emissa tamen prius per Te ipsum professione fidei coram Nobis aut vicario nostro generali et postea coram capitulo. Et ita conferimus, providemus, et assignamus ac exequi mandamus omni quo meliori modo. Datum——

[L. S.] N. Episcopus N.
N. Cancellarius Episcopalis."

52. If a canonry (or parish) has been reserved to the Holy See or if the fourth rule of the Apostolic Chancery is observed, the bishop who confers the benefice may use the following form:

"N: Episcopus N. Dilecto &c.

Cum per te Nobis præsentatæ fuerint litteræ Apostolicæ Sanctissimi in Christo Patris et D. Nostri —— Divina Providentia Papæ——, in pergamena scriptæ cum plumbo pendenti, cordula canapis more Romanæ Curiæ, quas Nos, qua decet reverentia, recepimus, tenoris sequentis, videlicet (et hic inseratur tenor Bullæ) et successive Nobis instantiam feceris ut ad ipsarum litterarum executionem procederemus; Nos volentes mandata Apostolica exequi juxta formam in dictis litteris præscriptam, de expositis et contentis in eis debitam capi mandavimus informationem, qua diligenter capta, et constito Nobis legitime ex actis narrata Sanctissimo Domino Nostro esse vera et verificata, teque esse habilem et idoneum ad dictum canonicatum et præbendam (vel parochiam) prout idoneus (et dignus) repertus fuisti a nostris examinatoribus (additur synodalibus si beneficium sit cum cura animarum, et inseritur "dignus"); proinde dictum canonicatum et præbendam (vel parochiam) ut supra vacantes tenore præsentium auctoritate Apostolica, qua in his fungimur, cum omnibus suis fructibus, proventibus, emolumentis et distributionibus ac annexis tibi conferimus et assignamus, amoto quolibet alio illicito detentore, quem amotum

esse prædicta Apostolica auctoritate per præsentes decernimus, recepto et per te præstito corporali juramento &c (et sequere ut in præcedenti formula.) In quorum &c.

[L. S.] N. Episcopus N.
N. Cancellarius Episcopalis."

53. In appointing a diocesan consultor the following form may be used:

"N— Episcopus N—. Dilecto Nobis in Christo N. N. (S. T. D. vel alias) salutem in Domino.

Quum rerum conditiones in quibus diœcesis nostra præsenti versatur tempore, cathedrale capitulum fieri non sinant, necessitati huic alio quo meliori modo possimus, satisfacere opportet Nos conemur. Itaque decretis Concilii III Plenarii Baltimorensis obtemperantes, post propositionem nominum a clero diœcesano factam in scriptis (et in synodo), Te de cujus pietate, morum integritate, sollicitudine pro animarum salute, doctrina, prudentia, rerum hominumque experientia, necnon sacrorum canonum et diœcesanorum statutorum observantia plurimum in Domino confidimus, in diœcesanum consultorem cum omnibus juribus et oneribus in præfato Concilio determinatis, sine tamen quacumque mercede ex hoc capite percipienda, ad trennium auctoritate nostra ordinaria tenore præsentium nominamus, constituimus, facimus et deputamus. Teque coram nobis personaliter constitutum per bireti capiti tuo impositionem investimus et in actualem possessionem officii consultoris immittimus; recepto prius per Nos et per te præstito ad sancta Dei evangelia corporali juramento, quod Nobis et successoribus nostris episcopis obediens eris et fidelis, et sanctæ matri ecclesiæ; et ipsi diœcesi nostræ secundum ipsius statuta et ordinationes deservies et deservire facies, juraque ejusdem manutenebis et pro posse defendes, necnon et alia consultoris officia fideliter adimplebis; emissa etiam prius per te ipsum professione fidei

coram Nobis (vel vicario nostro generali.) Volumus autem ut in consultorem diœcesanum omnes Nobis in episcopatu et jurisdictione subjecti te recognoscant, recipiant et admittant. Et ita statimus ac exequi et publicari mandamus.

Datum &c.

[L. S.] N. Episcopus N.

N. N. Cancellarius Episcopalis."

NOTE.—On Aug. 31, 1886, Bp. McNeirny of Albany asked the Propaganda "May the vicar general of a bishop be a consultor?" Cardinal Simeone, after giving the reasons why the vicar general should not be a consultor, the principle one of which is that the two offices are essentially distinct and should be discharged by two different persons, gives his decision in these words: "Negative vel saltem non expedire." On receipt of this answer the Archbishop of New York wrote the Cardinal Prefect stating that his vicars general knew the diocese very well and that their advice in matters coming before the consultors would be very important and asking permission for them to be appointed consultors. The answer came back: "Tolerari posse, modo tres saltem alii consultores habeantur." From which it seems the appointment of a vicar general as consultor is only tolerated and from the words of the answer provision was made only for that particular case.

CHAPTER V.

APPOINTMENT OF RURAL DEANS AND BISHOP'S CHANCELLOR.

54. In former times when access to the episcopal city was difficult and necessity more frequent, certain priests were commissioned by the bishop to act as vicars forane or rural deans. They had no authority in criminal matters, but could settle summarily trivial civil contentions. To-day where they exist they have no jurisdiction nor any authority whatever over the clergy of their districts, except to preside at the theological conferences which are held according to diocesan statutes. Besides this they may be empowered to watch and report to the bishop at stated times "whether the clergy and people live as they should, whether proper worship is held in the churches, whether the furnishings of the church and especially the sacred vessels are kept clean and whether the decrees made by the bishop on visitation are properly executed."

55. Rural deans have no precedence over the clergy of their district except during conference. "Any custom to the contrary is an abuse." (*Confer Zitelli, Appar. Juris Eccl. page 147. Craisson Manuale, n. 634.*) "The Sacred Congregation of Rites in at least sixteen decisions given to different countries and made of universal application, has de-

creed that "a vicar forane or rural dean, by reason of that office has no precedence in choir, in sessions, in processions and in other acts and ecclesiastical functions over other parish priests, canons and priests older and more worthy than himself; but the vicar or dean must stand, sit and walk in the place of his reception and dignity, just as if he were not a vicar forane or dean, both with the cotta and without it *notwithstanding any and every order of the bishop to the contrary;* except only in those congregations or conferences which are held each month by order of the bishop, in which as the delegate of the bishop he should precede all, but not, however, in the procession, mass and other acts which take place before or follow the conference." And in another decree, intending to eliminate even the custom, the same Sacred Congregation ordered the observance of the above decree, "notwithstanding any and every custom to the contrary." (*Confer Ferraris sub verbo Vicarius; Monacelli, Tom. I, tit. I, form. 4.*)

Hence not even the bishop can entitle a rural dean, "Very Reverend;" which is an abuse, and the use of which title is unauthorized and unjust. Rural deans are not appointed for life, but at the pleasure of the bishop; hence their appointments lapse with the death of the bishop, and a new designation is required after the vacant see is filled.

56. The following form may be used in making the appointment:

"N. Dei et Apostolicæ Sedis gratia Episcopus N.

Dilecto Nobis in Christo N. N. (Doctori vel alias) salutem in Domino.

Multifariis diœcesis nostræ negotiis implicati, cupientes tamen ut clerus, præsertim junior, in districtu a sede nostra procul remoto, in pietate, studiis et moribus progressum faciat, caventes insuper ne abusus in cultum divinum vel in clerum irrepant, te, de cujus probitate et idoneitate plurimum in Domino confidimus, in nostrum vicarium foraneum seu decanum ruralem ad beneplacitum nostrum (vel ad trennium) in loco N— nostræ diœcesis facimus, constituimus et deputamus; dantes tibi facultatem congressibus seu collationibus theologicis, juxta statuta diœcesana habendis, præsidendi, imponentesque in te opus discrete vigilandi fideliterque Nobis referendi num clerus et populus, ut decet, vivant, et notabilia, si quæ in districtu contingant, tempore informandi: sine tamen quacunque mercede ex hoc capite percipienda, vel alia præeminentia quam in collationibus theologicis tibi vindicanda; mandantes omnibus, ad quos spectat, ut te in talem vicarium recognoscant et admittant. Ita statuimus ac publicari jubemus. Datum &c.

[L. S.] N. Episcopus N.
N. N. Cancellarius Epis."

From time to time, as the occasion requires, the bishop may give special faculties or instruct the dean to look after certain specified matters. A rural dean has no faculties from the law; all he has he must receive from the bishop.

57. A necessary official in every episcopal curia is the bishop's chancellor. The law supposes him to be a layman, but clerics are not prohibited from acting as chancellors to bishops. (*Monacelli Tom. I, tit. I, form 5.*) The duty of the chancellor is to draw up and countersign documents necessary in granting favors or administering justice and to carefully guard and preserve documents pertaining to

the diocese and its administration. He may be considered a notary whose official writings are to be credited throughout the diocese in ecclesiastical courts and out of them. The work of the episcopal chancery, that is, the position itself, must neither be sold nor rented; but must be performed by the bishop's servants on a stated salary without any participation in the emoluments. *(Confer Ferraris, Cancellarius, n. 7.)* The emoluments or charges for drawing documents should not exceed the tax arranged by Pope Innocent XI where it applies, and should otherwise conform to the diocesan regulations. The chancellor of a bishop must conform his charge to the *taxa Innocentiana* for copies of acts and of civil or criminal processes. This charge cannot be more than half a "Roman Julius" for a two page sheet of which each page must consist of at least twenty lines and each line of at least twenty letters, making forty lines of twenty letters each for half a "Roman Julius." But the change in the value of coins should also be considered.

58. The position of episcopal chancellor, it is evident, is one of trust, but not of special honor. It belongs to the laity rather than the clergy. When filled by a clergyman, even by a priest, it gives the clergyman no precedence whatever over the other clergy; nor can the bishop because of the office of chancellor give its incumbent any such precedence. The office is that of a familiar, trusted and hard-worked. Should the bishop desire to favor his chancellor if a priest, he should appoint him also to some other office which will give him the desired precedence. This view is sustained by an answer of

the Sacred Propaganda given Dec. 22, 1896, to a bishop who desired to sub-delegate certain matrimonial faculties to his chancellor, for the reason that his vicar general resided out of the episcopal city. The answer ignored the chancellor and advised the bishop to appoint a vicar general in curia. An inquiry into the validity of some dispensations signed by the bishop's chancellor even though a priest, but not signed by the bishop or the vicar general, might be quite pertinent. While it might appear presumptuous to question such methods, still some careful pastors might prefer not to use such dispensations, especially when extraordinary faculties are required. The chancellor by law has no right or power to issue dispensations; he simply draws the document and attests the bishop's signature or that of the vicar general; if sub-delegated by the bishop it seems he should mention this sub-delegation as the bishop is required to mention his special delegation by the Holy See. The bishop himself or the vicar general must sign the dispensation. If the chancellor signs the bishop's name and then his own, the document is worthless as proof. Neither can the offices of chancellor and vicar general be filled by the same person, for they are incompatible.

The aspirant for the position of episcopal chancellor should know how to draw up all necessary documents pertaining to the bishop's office, and all the laws governing ecclesiastical processes in which he may be obliged to participate; for, if through fault of his, damage is done, he is liable therefor. Before taking possession he must take the oath of office. The parties to a cause may challenge the

chancellor for good reasons, and another actuary must then be assigned for that case.

59. The following form may be used for the appointment:

"N— Episcopus N— Dilecto Nobis in Christo N—, &c.

Cum de idoneo cancellario providere cupiamus qui Nobis et tribunali nostro inserviat, et quæ in illo agenda sunt diligenter adimpleat, et scripturas librosque ad nostram cancellariam spectantes fideliter custodiat, erga personam tuam mentis aciem direximus, cujus vitæ honestas, morum probitas, fides, diligentia, habilitas, aliæque qualitates apud Nos multiplici commendantur testimonio. Quapropter illarum intuitu tenore præsentium auctoritate nostra ordinaria, et omni alio meliori modo quo possumus, te in nostrum cancellarium eligimus et deputamus cum facultate universa et singula agendi et faciendi tam in voce quam in scriptis quæ gerere et facere secundum legem possunt et debent cancellarii episcopales; ita ut tuis scripturis tam publicis quam privatis durante officio omnis fides in judicio et extra adhibeatur. Ac insuper assignamus tibi annuum salarium—— dollariorum, quod mensuali portione ex (diœcesanis) fundis accipies cum congrua habitatione et victu in ædibus nostris episcopalibus, sine tamen alio quocunque emolumento, exceptis quæ juxta taxam diœcesanam pro documentis transcriptis rite accipies, vel alio modo ex nostra liberalitate tibi specifice donabuntur. Mandamus itaque omnibus nostræ jurisdictioni subjectis, ceterisque ad quos pertinet, ut te in talem agnoscant et recipiant sub pœnis nostro arbitrio pro modo culpæ infligendis. Præsentibus ad nostrum beneplacitum valituris. In quorum fidem &c. Datum &c.

[L. S.] N. Episcopus N.

N. N. Secretarius Episcopi."

60. This appointment should be countersigned by the bishop's secretary and by him copied in the chancery register that no dispute may occur regarding the validity of the chancellor's acts. Proper notice should also be given to the diocesan clergy in the usual way. The oath to be taken by the chancellor before taking possession of his office is as follows:

"Ego, N. N. curiæ episcopalis N— cancellarius electus, promitto, spondeo et juro, me officium quod suscepi fideliter et sincere quantum in me est executurum et impleturum, nec quidquam in eo favore aut gratia humana acturum; sic me Deus adjuvet et hæc Sancta Dei Evangelia."

A notary or actuary appointed for a special case or in general is obliged to take a similar oath, a neglect to do which will render at least suspected if not invalid all the records he writes. (*Confer Monacelli, Tom. I, Tit. 7. Form. 10.*) He says that all officials on taking office are obliged to make oath to fulfill their duties properly.

The chancellor has no precedence over the clergy because of his office, which is merely that of a notary. He cannot be entitled "Very Reverend," as specially shown in the following chapter, n. 65.

It should not be overlooked that the bishop's chancellor has by law no right whatever in the administration of diocesan property; hence, if advisable, special provision should be made for this purpose in each new appointment, and notification thereof given the clergy.

CHAPTER VI.

APPOINTMENTS OF NOTARY, SECRETARY AND ECONOME OF BISHOP.

61. The chapters "Quoniam," *de Probationibus*, and "Ut officium" *de Hæreticis* ordain that judicial acts must be written either by a public notary or by two competent men. But custom has abolished the employment of these two writers, as Reiffenstuel shows. (*Cf. Lib. V. Decret. tit. I, n. 344.*) Therefore a notary public is absolutely required for the purpose; otherwise the acts would neither be authentic nor worthy of confidence and therefore the whole judicial proceeding on account of this defect would be nullified.

62. A notary is a person constituted by public authority, so that acts written and attested by him may be considered authentic and worthy of confidence. The necessity of having such persons is recognized by both the church and the various civil governments. None but the supreme power in church or state can by inherent right create notaries. Thus only the Pope for the church, the President or Governor for the state. The reason is that only the supreme power can enact or introduce what exceeds the law of nations, such an enactment being, "that full credence shall be given to the writing of one man which is a dead and inanimate witness without

the corroboration of a living voice or other attestation." This is the unanimous teaching of canonists; but they also teach that by custom, introduced with the consent of the Pope, bishops may create notaries for their dioceses. Since, however, the creation of notaries is held to be an act, not of voluntary, but of contentious jurisdiction, a bishop living outside his diocese cannot there create a notary or chancellor for his diocese. (*Cf. Pirhing, Tit. 22, Lib. 2, Decr; Bouix, De Judiciis, page 449.*)

63. Because the bishop has the power to create notaries only from general custom, it follows that he must himself perform this act and cannot delegate it to his vicar general or others. This point is important for ecclesiastical trials and in fact for all public documents. Since the bishop's chancellor is a notary it applies also to the appointment of the chancellor.

The general and provincials of religious orders may create notaries for judicial processes within the order; and inquisitors may create them for processes concerning faith.

Notary seems to be a general term. An actuary is a notary appointed to write the acts of a particular case or cases, and seems to be rather a specific term. But in general the terms, notary, actuary, chancellor are interchangeable, and the qualifications should be the same.

64. Notaries created by the Holy See are called apostolic notaries, and have authority throughout the world. There are two classes, notaries and protonotaries. Protonotaries are either participating in the Roman curia, seven in number, or *ad instar participantium.* Notaries created by bishops are

called ecclesiastical notaries; those created by the state are termed usually notaries public.

A notary can validly draw up and attest writings only within the territory of the power appointing him. It is held as probable by canonists that by custom a notary may outside his territory by consent of subjects of his own territory draw up documents for them. (*Cf Pirhing, l. c.*) An instrument drawn validly by a notary in his territory is held authentic everywhere; though the state governments usually require the consular seal of their own representative in foreign countries to attest the notary's signature.

65. By general law all clerics in sacred orders are prohibited from acting as notaries, chancellors or actuaries. This is certain from the decretal "Sicut" Lib. 3, Decretalium, title 50, n. 8. This prohibition according to Fagnanus, *in locum citatum*, and other canonists applies whether clerics have benefices or not, and according to the same author it applies also to all clerics in minor orders who have a sufficient support. Religious are also prohibited, as is evident from Caput *ut officium*. (*Lib. 5, tit. 2, n. 11, in* 6°.) But by that same decretal an exception is made for causes of faith and heresy, so that any competent cleric may act as notary for these cases, and must serve without compensation. Another exception is made for apostolic notaries, for the Pope when appointing them, by that fact dispenses from the general law. (*Cf. Fagnanus, l. c.*) According to the general written law this prohibition against clerics being notaries applies also to causes in ecclesiastical courts; but by the general practice of today, as well as that of former times, it is lawful for

clerics even in major orders, to act as notaries or chancellors for acts of ecclesiastical authority. (*Cf. Thomassinus, Vet. et Nov. Ecc. Discip. 1, l. 2, c. 106; Monacelli, Tom. I, tit. I, form. 5.*) Fagnanus, however, and others claim the contrary. But whether it is more expedient to have a layman than a cleric for the bishop's chancellor and for the business of the ecclesiastical courts, must, it seems, be left to the judgment of the bishop. Where a tax is assessed on documents, people are likely to decry the chancellor, particularly if a clergyman. But on the other hand the many delicate matters of the bishop's curia which must be recorded and guarded by the chancellor suggest that he might with greater propriety be in major orders if not a priest. This would also be more satisfactory to the clergy at large.

From the above, however, it is very evident that the chancellor, notary or actuary cannot by virtue of his office have any precedence over the clergy, whether he be a priest or not. Neither can the bishop give the chancellor any precedence, as shown in chapter three of part second of this book. It also follows that entitling a bishop's chancellor "Very Reverend," because of that position, is preposterous.

66. Laymen certainly may act as chancellors for the bishop or as notaries, also in spiritual matters, provided they are appointed by ecclesiastical authority. Strictly speaking, notaries created by the state cannot act in ecclesiastical matters, unless custom has made such acting lawful. A reservation, however, must be made for causes of canonization, for which none but an apostolic notary can be employed. For the drawing up of ecclesiastical documents scarcely

any state notary with us would be considered fully competent, and it must be said that no custom with us has authorized notaries public, or state notaries, to act in church matters, except possibly to attest by signature and seal the affidavits of witnesses and others in matters to be submitted to ecclesiastical courts. Such attestation has been held valid by the Apostolic Delegation.

67. Certain qualifications are required in an ecclesiastical notary, among them being legitimate birth and a knowledge of law, though not necessarily a degree in it. If he presumes to act without sufficient knowledge, he is liable for all damages caused by mistakes. So true is this, that a bishop may cause not only his own appointed notaries, but also apostolic notaries to be examined, and if found incompetent he may prohibit them from continuing to act. A notary or chancellor sins against his office if he undertakes it without sufficient knowledge of law and the practice of courts, or if he violates his oath, or adds or detracts anything important in taking testimony. Again he sins if he commits the examination to a copyist with danger of mistakes, or if he is negligent in guarding the acts to the injury of the parties. Further he sins if through culpable ignorance or malice he omits the necessary solemnities in documents, or if he draws up a false document or violates the secret of his office, for example by revealing testimony to one or the other party before the legal publication. He sins also by hiding the acts or refusing copies of the process to the parties, or by placing a fictitious document in the stead of one lost. He can also offend by acting through fear

or favor. Incompetent notaries not unfrequently are the occasion of much scandal and injury.

68. Common usage has made it obligatory for the notary or chancellor to take on entering upon his duties an oath of fidelity. This usage is immemorable, for documents even of the middle ages contain such signatures as "I. N. N., a sworn notary." Pope Clement V prescribed such an oath to be taken by the notaries commissioned by the twenty French bishops to whom that privilege was granted in the council of Vienne; but there seems to be no general positive law. However, the universal, immemorable custom, as well as the unanimous teaching of canonists, requires the notary to take oath; and its omission would undoubtedly render all his acts suspected if not ipso facto null and void. So certain is this, that it may be maintained that a notary until he has taken the oath of office is only a private person and his word is only that of a private individual. Further, if an oath is required of a witness for the validity of his testimony, unless specifically waived, *a fortiori* the oath of office is required for the validity of such an extraordinary witness as the mere writing of the notary. Moreover, article 18 of the "Cum magnopere" enacts that all officials in trials must make oath to perform their duties faithfully. For public safety, therefore, and because of the importance of the matter, the acts of a notary who has not taken the oath of office should be held and have been held null and void. The form of this oath for the notary is given in n. 60 of the previous chapter.

69. The following form may be used in appointing a notary:

"N. Episcopus N.— Dilecto filio &c. Cum vitæ tuæ honestas, morum probitas, fides, diligentia atque habilitas apud Nos multiplici commendentur testimonio, harum qualitatum intuitu, tenore præsentium, auctoritate nostra ordinaria, et omni alio meliori modo quo possumus, te in publicum notarium eligimus et deputamus; cum facultate universa et singula agendi et faciendi, tam in voce quam in scriptis, quæ gerere et facere possunt et debent notarii publici auctoritate ecclesiastica creati; ita ut tuis scriptis tam publicis quam privatis, durante officio, omnis fides in judicio et extra adhibeatur; cum consueta mercede; mandantes omnibus nostræ jurisdictioni subjectis ceterisque ad quos pertinet, ut te in talem agnoscant et recipiant, sub pœnis arbitrio nostro pro modo culpæ infligendis. Præsentibus ad beneplacitum nostrum valituris. In quorum fidem &c. Datum &c.

N. Episcopus N.
N. N. Cancellarius Episcopalis."

A copy of this appointment and a minute of taking the oath should be left in the chancery and mention must be made of them in the beginning of each judicial process in which the notary is engaged. Should the notary or chancellor become ill, another must be deputed to take his place and a proper record be made in the acts of the process. Only the bishop himself can create this substitute notary, but not the vicar general or a judge-delegate who may be acting in the case. Hence lest the bishop be absent or unable for some other cause to supply the vacancy when it occurs, it seems prudent that he create in his diocese several competent notaries who may be substituted when necessity requires it. The state has several notaries public; so also should each diocese have more than one. It may be advantageous

also to have aspirants for the notaryship attend certain ecclesiastical trials with the notary of record so that they may gain experience, which cannot be acquired from books.

70. The secretary of a bishop is a private person who writes letters and otherwise fulfills the orders of a bishop for whom he is engaged. He may be a layman or a priest, but good policy suggests that if not a priest, he be at least in sacred orders, because of the delicate matters which come to his knowledge through intimate association with the bishop. For this reason also he should be eminently trustworthy. He is not a public official and is not recognized in law. Hence all communications sent by him to the clergy should always contain the expression "by order of the bishop," or "the bishop directs me to say." He is a familiar of the bishop to whom he is responsible, and who in turn is responsible for his acts and writings. The position itself gives him no precedence over the clergy of the diocese, and he necessarily ranks below the movable rectors, nor can the bishop give him precedence other than accorded him by holy orders. The bishop is personally responsible for the salary of his secretary. Frequently the bishop's secretary has also some official position which gives him rank and additional support.

71. The Second Plenary Council of Baltimore, n. 75, determined and expressed the conviction that it would tend greatly to the relief of bishops and the good of the church, if each appointed an econome or procurator, either a layman or a cleric, for the administration of temporalities. His duties might be

to care for the bishop's house in temporal matters as well as to administer the diocesan property under direction of the bishop, to whom at stated times he would render an account. For, as the council thinks, bishops, on whom rests "the care of all the churches" and "for whom it is not right that they leave the word of God and minister at the tables," should so arrange the administration of their dioceses that, not being troubled with the care of temporal matters, they may be free to devote their whole energy to spiritual affairs and the salvation of souls. The council quotes from the council of Milan and from the reforms introduced by St. Charles Boromeo on this subject. The Fifth Council of Milan as well as previous councils made the appointment of an econome an obligation; but the Baltimore council was content with giving a strong admonition that it should be done.

72. In the first ages of the church, as we learn from the councils of Gangra and Antioch, the bishops administered all church property. But they had two checks, the one that they were obliged to use the advice of their priests and deacons, that is the cathedral chapter, the other that they might on complaint be called to an accounting and judgment before the provincial council. The council of Calcedon, canon 26, ordered that each bishop should appoint one of his clergy econome for the administration of church property; and so strict became the law, that Photius later notes that one of the charges against Chrysostom was, "that he administered church property without consultation, that no one knew where the revenues of the church went;

that he had sold through Theodulus the property left by Thecla." The reason why the Calcedon council was moved to make such a law was that certain bishops, notably Ibas of Edessa, were maladministering church property and diverting it to the use of their families. The Fourth Council of Toledo, in canon 48, enacted that "if any bishop hereafter shall choose to administer church temporalities through a laymen or shall govern without an econome, he shall be held a contemner of the canons and a defrauder of the church and shall be amenable to the provincial council." It is against the law to have laymen in full charge of church property, though they may be granted some participation. Priests were first appointed economes, but later deacons began the temporal administration under mandate of the bishop in both the east and the west, and carried their pretensions so far that in time they took precedence of priests, even of those having the care of souls. Gradually the power of the arch-deacons, who besides having contentious jurisdiction, were made economes by bishops, became so great that these administrators became presumptuous even against the bishops who appointed them. To curb such presumption which had become almost founded in law, bishops began appointing vicars general other than the arch-deacons, and chose economes from among their clergy who would be more docile than those already too powerful throughout the diocese.

73. When parish priests began to be appointed, the tithes and other church property in their parishes came under their administration, the bishop retaining only the right of supervision, that the property

might not be alienated or badly administered. The law now is that as soon as a parish becomes vacant an administrator or econome must be appointed by the bishop to guard its revenues. A similar obligation rests on the cathedral chapter, for in case of vacancy occurring in the see, the chapter must appoint, according to the council of Trent, an econome to temporarily administer the finances of the diocese. It will be noticed from the above that the duties of an econome may vary much. The economes made of obligation in the councils of Calcedon and Toledo had charge of all church property, because no division of it had yet been made into four parts, for the support respectively of the bishop, the clergy, the church fabric and the poor. But the Fifth Council of Milan and the practice following therefrom concerned the property after this fourfold division. In its eleventh chapter the council enacts "that each bishop shall appoint an econome, who shall not be a layman, nor a relative, but an ecclesiastic of his diocese, and who if possible shall be a deacon well versed in this kind of business. The bishop shall each third year bring and exhibit to the provincial council the account books of his administration by such econome and give in that same council a conscientious report of his whole administration." (*Cf. V Council of Milan; Thomassinus, Vet. et N. Eccl. Disc. p. 3, l. 2, c. 9-12.*)

74. The apostolic canons, n. 39, gave to the bishops the full administration of the offerings of the faithful. But this discipline could not and did not last long. When these offerings were increased and real property was acquired, another method became nec-

essary. The bishops, even in the first ages, counseled with their presbyteries or chapters regarding the administration and distribution of church property. Later certain councils in both the east and the west made it obligatory on bishops to appoint clerical economes. Gradually also cathedral chapters acquired many rights in the administration of diocesan property, while all parish property was subject to the administration of the respective parish priests. It is evident also that bishops were obliged to render an account of their administration to the provincial council every three years; and therefore that they had never an absolute and irresponsible control of church property.

75. While in missionary countries many exceptions are made so long as necessary to the general laws of the church, still prudence dictates that laws founded on the sad experience of the past should be put into force just as soon as possible also in the countries subject to the Propaganda. The absolute ownership of church property by the civil title being in the person of the bishop alone, is contrary to the spirit and the laws of the church even though allowed as a last resource for exceptional reasons by the councils of Baltimore. The exclusive administration of church property by a layman is also against the laws and spirit of the church from the apostolic canons down to the present day. While the Second Council of Baltimore allowed such administration because it was supposed then necessary, still to-day throughout the whole United States, neither that exception nor the other of the absolute tenure by the individual bishop seems necessary in fact or maintainable in

good conscience in view of the censures lodged against alienation of church property. The tenure before the civil law which best harmonizes with the laws and spirit of the church, is the plan of a corporation consisting of the bishop and several priests, with whom if advisable a minority of laymen may be associated. This is in vogue in several states and has been found eminently satisfactory. It best secures the property and yet amply preserves the authority of the bishop. Further, it seems an approach to the chapter system, and will do away with the odium of one man holding immense properties. The corporation plan has also received the sanction of the Sacred Propaganda in a Detroit case, decided January 11, 1897, wherein these words are used: "This same decision shall remain in force when the administration of the diocesan funds shall pass to a corporation to be eventually established for the holding of the property appertaining to the diocese."

76. The mandate of the bishop to his econome should explicitly designate the duties of the latter, and if the econome thereby is obliged to correspond with the clergy of the diocese and receive from them the sums required for cathedraticum and such purposes, his appointment must be published to them so that they may know precisely what are his powers. The law gives him no authority, but makes all his power and duties depend on the written mandate of the bishop. The office of econome to the bishop is one of trust and grave responsibility; but since it may be held by a deacon or any lower cleric, the position cannot give its incumbent any precedence over

the diocesan clergy; nor can the will of the bishop enforce precedence to the detriment of others.

Following is a general form for the appointment of an econome, which may be changed according to desire:

"N. Bishop of N. to Rev. N. N. Beloved in the Lord. Greeting: The councils of the church having wisely advised that bishops should appoint an econome for the management of their household and other temporal affairs, we, seeing the great utility for our diocese which may ensue, have resolved to relieve ourselves of much of our detail work in temporal affairs and to confide it under our supervision to some experienced, faithful and devoted clergyman. Trusting therefore in your experience, tact and carefulness in business matters and having great confidence in your honesty, fidelity, unselfishness of character as well as devotion towards ourselves, we hereby choose, designate, make and appoint you our econome in temporal matters during our good pleasure, giving you all and singular the necessary powers to collect cathedraticum and all other moneys or obligations due us or our manse by diocesan law or custom from the parishes or priests or other persons of our diocese or for interest on invested funds; authorizing you to receipt officially for the same when paid, and to place all moneys so received as well as others which may come into your charge, in a bank or other place of safe-keeping; authorizing you further to pay from said moneys the necessary expenses of our household and such other items as we from time to time may direct; and after consultation with us to invest the balance of such funds; instructing you hereby to keep proper and exact accounts of all receipts and expenses and to render an accounting to us in writing at the expiration of each three months and as often as we shall require; allow-

ing you a yearly salary of —— dollars, payable monthly, and also proper lodging and board in our episcopal residence. And we command all whom it may concern to recognize you as our econome and pay to you the moneys hereinbefore mentioned. In testimony whereof we have ordered the above letters patent to be expedited, registered in our chancery and published. Given at &c.

N. Bishop of N.

N. N. Bishop's Chancellor."

CHAPTER VII.

APPOINTMENT OF FISCAL PROCURATOR, DEFENDER OF MARRIAGE BOND, COURT MESSENGER, AUDITORS OF ACCOUNTS.

77. In every diocese it is necessary that a curia be established for the exercise of contentious jurisdiction. In the United States a diocesan curia is of strict law and a papal dispensation is required for temporary relief from the obligation of establishing it. (*Cf. Third Plen. Council Balt. n. 297-298.*) By the diocesan curia, or the bishop's court is meant that body of persons, who, either with the bishop or in his name exercise contentious jurisdiction. In the United States this court is necessarily composed of the bishop or vicar general or his delegate, as judge; of the chancellor of the diocese or some other notary as actuary or secretary; and of the fiscal procurator as plaintiff or accuser. To these the bishop may add, if advisable, an auditor, other notaries and messengers. A special tribunal should also be provided for matrimonial causes.

78. According to article 13 of the instruction "Cum magnopere," a fiscal procurator or diocesan prosecutor must of necessity be appointed in every episcopal curia, "in order that justice and the law may be satisfied." A criminal trial without a regu-

larly appointed fiscal procurator is ipso facto null and void. It is the right of the prosecutor to intervene at all judicial proceedings, whenever any step is taken against an accused person. It is the right and duty of the fiscal procurator to draw up and present the charges against the accused and he is therefore responsible, if, through his carelessness, malice or want of firmness, malicious charges are allowed to be heard in court; for, before the bishop may cite an accused person the opinion of the procurator must be given that the charges seem sustainable.

79. It is evident, therefore, that a fiscal procurator must know canon law not only in its primary principles but in its details, though he need not necessarily have a degree in law. He should also be endowed with great prudence, for an imprudent or ignorant procurator can do immense harm and easily create scandal. A prosecutor or fiscal procurator can act only in the diocesan curia for which he is appointed. He has no standing in any other court, not even in the metropolitan court on appeal, unless he has been specially authorized by the metropolitan.

The fiscal procurator is a familiar of the bishop, and must receive a salary from him, even if no previous arrangement has been made regarding it. (*Cf. Bouix, De Judiciis, Vol. I, p. 475.*) He is appointed during the good pleasure of the bishop, and consequently may be removed without a canonical trial, though not without grave and sufficient cause and proper security for his reputation. Any cleric may be fiscal procurator for the bishop, sacred orders not being required for the position. He has no pre-

cedence over the other clergy, nor is he entitled "Very Reverend." In case of necessity the vicar general may appoint a procurator temporarily; but he cannot remove one appointed by the bishop.

80. The fiscal procurator should remember that if during his investigation he discovers testimony favorable to the accused he is obliged to make it known. He is not a persecutor but an official prosecutor, who acts not from personal motives but that justice may be satisfied. For the same reason when an accused person has once been tried regularly and acquitted in the diocesan curia, the prosecutor cannot appeal to a higher court and have the accused again tried on the same charges. (*Cf. Monacelli, p. I, tit. I, f. 8.*) In the United States an unviolated prescription of over a hundred years from the establishment of the hierarchy has made the custom of the prosecutor not appealing from an absolving sentence so strict a law that his attempt to appeal would not only render him odious, but would also be clearly illegal. The fiscal procurator on assuming office must take an oath to fulfill his duties properly. This is required in the Roman law. Hence, also, under canon law, for no exception has been made in it. (*Cf. Bouix, De Judiciis p. 473; Craisson, Manuale n. 5769.*)

81. The following form may be used in appointing a fiscal procurator, publication of it being made in the usual way:

"N. Episcopus N—. Dilecto N—, &c.

Idoneitate, probitate, experientia et prudentia tua innitentes, ut justitiæ et legi, ut decet, in nostra diœcesi satisfiat, te procuratorem fiscalem nostræ curiæ

ad beneplacitum nostrum cum emolumentis solitis et consuetis, seu salario annuo —— dollariorum menstrue solvendo, nominamus, constituimus et deputamus; dantes tibi omnes facultates necessarias et convenientes ad ea omnia implenda quæ ex Instructione "Cum magnopere" et Plenarii Concilii III Baltimorensis decretis ad officium procuratoris pertinere noscuntur, vel quæ tibi posthac specialiter mandabuntur; mandantes omnibus nostræ jurisdictioni subjectis, cæterisque ad quos spectat, ut te in officialem nostrum episcopalem seu procuratorem agnoscant et quoties opus fuerit tibi assistant. In quorum fidem &c. Datum &c.

[L. S.] N. Episcopus N.

N. N. Cancellarius Episcopalis."

82. In matrimonial causes, when there is question of the validity or nullity of a marriage, either a special judge or auditor may be appointed by the bishop, or the vicar general may act by virtue of his general appointment if matrimonial causes were mentioned therein. The chancellor or notary may be the same as for criminal cases. A special official, called the defender of the marriage bond, is required in every curia whenever a judgment is to be passed on the validity or nullity of a contested marriage. His presence is necessary for the validity of the judgment. The Third Council of Baltimore, n. 305, says this defender should be an ecclesiastic conspicuous for knowledge of law and probity of life. It is his duty to defend the bond of a contested marriage and to appeal to a higher court in every case of a decision annulling the marriage. The defender of the marriage bond has no precedence over the clergy. He is exhorted by Benedict XIV "Dei Miser. no. 12" to act without pay; but if he insists, then the party who

defends the validity to pay him if possible; otherwise the judge will pay him out of the sums dsvoted to pious works.

The defender must take an oath of fidelity not only when first appointed, but at the beginning of each case. (*Cf. Benedict XIV, Dei miseratione, n. 7.*)

The following form may be used for the appointment:

"N. Episcopus N.— Dilecto &c. Cum a Benedicto XIV in constitutione quæ incipit "Dei miseratione" provide statutum fuerit, ut in disceptandis matrimoniorum (quoties de eorum nullitate agitur) causis, aliquis deputetur, qui sub matrimonii vinculi defensoris nomine, eorundem valorem ex officio sustineat; idcirco nos, de tua idoneitate et probitate apprime conscii, te ad explendum in nostra curia dictum officium, juxta prælaudatæ constitutionis tenorem et præscripta, nominamus, constituimus et deputamus; mandantes omnibus nostræ jurisdictioni subjectis, ut te in defensorem matrimoniorum agnoscant et quæ tibi, ut tali, debentur, officia præstent. In quorum fidem &c. Datum &c.

[L. S.] N. Episcopus N.

N. N. Cancellarius Episcopalis."

83. A court messenger is required for serving citations, summoning witnesses and performing such other duties as usually pertain to the custodian of the court room. When properly appointed and registered, his official testimony that he served citations is considered full proof of the fact. Several messengers may be appointed. Following is the form:

"N. Bishop of N. To our Beloved N— &c. Wishing to provide our episcopal court with a proper messenger who will fulfill his duties with fidelity and alacrity and having confidence that you possess

these qualities, we by these present letters do choose, constitute and depute you as a public messenger or courier of our tribunal, during our good pleasure, with the duties, privileges and emoluments usual to the office; granting you all the necessary and opportune faculties for exercising in our whole diocese the office of messenger whenever you shall be called upon, admonishing you in the Lord to faithfully perform your duties, and commanding all to recognize and receive you as such messenger, under penalty to be inflicted in proportion to the offense. In testimony whereof, &c. Given at &c.

[L. S.] N. Bishop of N.
N. N. Chancellor."

84. It is not only a right but a duty on the part of the bishop to demand an accounting of those who administer charitable institutions or pious places. Undoubtedly he is also entitled to supervise the administration of all parish finances and must see that church property is devoted to its proper use. He cannot himself devote time to examine these various accounts, and therefore he usually appoints one or more auditors or examiners of diocesan accounts, giving them authority not only to examine the annual statements sent in by pastors and heads of institutions, but also to examine the books themselves from which these statements purport to be copied. It is advisable that these auditors likewise examine the books of the bishop's econome and report on their condition to the bishop. Such an auditor or examiner might accompany the bishop on his episcopal visitation, and at this time or some other, might make a comparison of the annual statements with the parish books. (*Cf. III Council Balt. no. 14.*) This auditor may be either a clergyman or a

layman and must receive compensation from the bishop if from anyone, for neither the bishop nor the examiner can exact anything whatever for the examination of these accounts, no matter what custom there be to the contrary. The Sacred Congregation of the Council has so decided. (*Cf. Monacelli p. 1, t. 1, f. 14.*) Should the accounts be found incorrect or the books in poor shape the auditor must refer the matter to the bishop or the vicar general and cannot himself proceed against the parties in fault.

This form may be used for the appointment:

"N. Bishop of N. To our beloved N. health in the Lord and greeting: The duties of our pastoral office require us to see that the goods and revenues of churches and pious places be properly administered, and that their accounts at proper times be examined and audited. Wherefore we, being occupied with the graver cares of the episcopate and confident of your fidelity, prudence and experience, do by these present letters choose, constitute and depute you during our good pleasure to be a general examiner and auditor of the accounts and the administration of all the churches and pious places of both our episcopal city and the diocese which are subject to either our ordinary or our delegated jurisdiction; giving you full faculty and power to cite all officials and administrators, as the law determines, and to compel them under penalty to be determined by us, to exhibit to you their books and receipts and all other papers required for a thorough examination and accounting. You will, however, not proceed against delinquents or those contemning these letters, without previous consultation with us or our vicar general. In testimony, &c. Given &c.

[L. S.] N. Bishop of N.

N. N. Chancellor."

PART SECOND.

PARISHES, PRECEDENCE, SACRED THINGS, FACULTIES, INDEX RULES, EDICTS, PROPERTY.

CHAPTER I.

PARISH PRIESTS, SYNODAL EXAMINERS AND CONCURSUS.

86. Parish priests are the chief auxiliaries of the bishop, because the actual care of souls is committed to them. They are truly pastors, but only of ecclesiastical origin, and therefore have only a limited jurisdiction, not independent but subject to the ordinary of the diocese. Their jurisdiction is also confined to the internal forum and is not contentious.

He may be called a parish priest who in his own name exercises the care of souls, whether his tenure be perpetual or only temporary. However, the council of Trent, (*sess. 24, ch. 13 de reform.*) expressly orders bishops to establish parishes where they do not yet exist, and having separated the people into

distinct parishes to assign to each its own *perpetual* pastor notwithstanding any and every privilege and custom to the contrary. The Sacred Congregation of the Council insisted on June 26, 1875, and on April 26, 1879, that movable vicars should not be appointed, but perpetual vicars should be chosen, except in the case of churches served by religious, which may have movable vicars. These decisions apply to countries where the hierarchy is established; but in missionary countries where there are no episcopal sees and consequently no parishes, the missionaries must be considered simply preachers of God's word, not parish priests. (*S. Congregation of Propaganda Jan. 28, 1780.*)

87. According, then, to the canons and especially to the idea of the council of Trent a parish may be defined, "a church of some diocese designated by authority of the Roman Pontiff or of the bishop, which has a people circumscribed within determined limits and a priest or rector by whom the sacraments, the word of God and other spirituals are exclusively and officially administered to this same people." A church is required as the center of unity and the designation by the Roman Pontiff or the bishop in order that there may be certainty of the foundation of the parish. (*Cf. Can. 11, causæ 16, q. 7; Conc. Trid. sess. 21, cap. 4.*) A certain people living within described limits of the diocese is required. (*Cf. Can. 1, caus. 13, q. 1; Conc. Trid. sess. 24, c. 13 de reform.*) But this does not necessarily preclude two or more parishes from having the same territory if they have a different people either in language or in rite. For a parish it is also required

that there be one determined priest from whom alone the people may licitly receive the sacraments. When a moral person, as a monastry or a chapter, is the parish priest, a vicar must be appointed to act for it. As soon then as these three requirements are present a true parish is said to exist, and to have been canonically erected. Even if documents cannot be produced, the very fact that a certain people of a determined territory receive the sacraments only from an appointed rector constitutes presumption of a canonical parish. A baptismal font and a cemetery give good but not conclusive proof that a church is a parish church, says Smalzgreuber l. 3, t. 29, n. 5; but to-day a cemetery is not necessary for a parish, because common burial grounds are used in many of the larger cities.

88. The Second Plenary Council of Baltimore, n. 124, decreed that in all the provinces of the United States and especially in the larger cities where there are several churches, certain districts, like parishes, with defined limits should be assigned to each church and that parochial or quasi-parochial rights should be given the rectors of such churches. This decree was put into effect, and throughout nearly every diocese, except probably those of the west and south, parish limits were determined and by that very fact canonical parishes were established by the bishops with the implied sanction of the Holy See, and in obedience to the council of Trent. The rectors of such churches (*Cf. idem Conc. n. 112.*) when properly appointed, thereby obtained ordinary pastoral jurisdiction over the people living within the limits assigned to their churches, and

other priests (except the ordinary) not unfrequently even by diocesan statutes, were excluded from administering within such parishes without the consent of the rectors. This is the common practice throughout most of the United States at the present time. According to the definition given above it seems well nigh incontrovertible that throughout most of the United States there are canonical parishes, for this former missionary country has an established hierarchy with dioceses, and these dioceses have by order of their bishops certain designated churches which have each a people within determined limits and a priest or rector by whom the sacraments and spirituals are exclusively and officially administered to this same people. DeAngelis, l. 1, t. 28, n. 6, maintains the same regarding our parishes. So also Pierontenelli, Praxis, tit. 4, n. 3.

89. Undoubtedly the bishops of both the Second and the Third Plenary Council wished to avoid granting irremovability to the parish priests whom they practically instituted. Hence in n. 125 of the Second and n. 32 of the Third Plenary Council they say: "In using the terms parochial rights, parish and parish priest, we do not intend to grant to the rector of any church the right, as they say, of irremovability, or to diminish in any way that power which from the received discipline in this country the bishop has of depriving any priest of his charge or transferring him elsewhere. But we admonish and exhort bishops not to use this right except for grave causes and with due regard for merit." By excepting irremovability they conferred all other rights. Moreover, the council of Trent

orders bishops to establish parishes; hence any and every act of theirs looking to the fulfilment of this law must be widely interpreted, favorable to the law, not against it.

It was with this same mind that in n. 24 of the same Third council the bishops say: "Ut igitur mentem sacrosanctæ synodi sequamur, quamdiu parochiæ canonice erectæ non sint, constituant singuli episcopi examinatores pro concursibus ad rectoratus irremovibiles." They seemed to take for granted that in a canonically erected parish, the pastor is necessarily irremovable and this right they wished to exclude from the movable rectorships; hence they incidentally asserted, without determining the matter *ex professo*, that as long as all parishes were not established with this full right of irremovability, still the clergy should be examined for appointments to certain irremovable rectorships. The explanation is plain. The bishops were willing to put upon the rectors all the duties of parish priests and to give them all the rights of them, except that of perpetuity of tenure, which the Holy See urged, and which the council of Trent expressly orders, but which the discipline introduced by the bishops in missionary times excluded. On the supposition that perpetuity of tenure is of the essence of a parish, the bishops constantly endeavored to assert that parishes have not been canonically erected in the United States. But under the supposition that a canonical parish is possible without necessarily implying perpetuity of tenure, there seems no doubt whatever that even many "movable rectorships" are true parishes, and that their pastors if properly ap-

pointed have all parish rights except perpetuity of tenure or irremovability. (*Cf. Bouix, De Parocho, page 201-127, Craisson, Manuale, n. 552.*) As a matter of fact and law the S. Cong. of Prop. on Nov. 8, 1882, declared that, "Amovability *ad nutum* is not in itself a sign that parish right is lacking." (*Cf. Collect. n. 212, pg. 79.*)

The expression in n. 24 of III Plen. Council of Baltimore "Quamdiu parochiæ canonice erectæ non sint" is not a universal negative, nor does it say there are with us no parishes. If such a meaning were intended, the assertion would be false in fact; for the Fathers of the Council knew and admitted that there were canonically erected parishes at least in New Orleans, and in the province of San Francisco and in the city of Detroit. The II Plen. Council of Balt. n. 108 admitted the parish in New Orleans; and in n. 340 mentioned the parish of Detroit. The learned Sabetti in his Moral Theology n. 710, q. 3, says that the pastors of some churches in the province of San Francisco are obliged on the appointed days to apply their mass for their parishioners; still he seems in the same number and elsewhere to consider the above passage of the Third council as quite conclusive proof that there are no canonically erected parishes in the United States. The passage of the Third council in view of admitted facts and the decrees of the First and Second councils which authorized the establishment of districts and churches and exclusive rectors, seems of little force in settling the question whether or not there are parishes in the United States. Moreover a cursory assertion is only as valuable as the facts on which it

is based. It cannot make the facts. Too much is attempted to be proved by this passage; therefore nothing is proved. (*Cf. note p. 233 below.*)

Ten years before the celebration of the III Council of Baltimore, the First Provincial Council of San Francisco, held in 1874, in decree 16 declares explicitly that there are in that province certain canonically erected parishes; and insists that both pastors and people therefore comply with their respective duties. Hence the casual assertion of the III Council of Baltimore cannot have much weight in law to prove there are no parishes in the United States.

Moreover the argument drawn from the III Council of Baltimore is based simply on a narrative passage; and it is a well known principle of law "Ex narrativis non valet argumentum." (*Pyrrh. Corr. Praxis, l. 3, c. 1, 5.*) Finally the S. Cong. of the Propaganda which never does things thoughtlessly or uselessly, has granted the bishops of the United States in no. 4 of Form C the faculty of permitting parish priests subject to them to abstain for good reason from applying their mass for their people on suppressed feasts. Now if there are no parishes in the whole United States what sense is there in this act of Rome? These special faculties are given to bishops with a thorough knowledge of the needs of the country in which they are to be used. Hence different forms are given for different countries. The bishops of Canada (form T), of Ireland (form VI), of Germany, Austria, Poland, Russia, Belgium (form III), of France (form X) and prefects apostolic (form IV) and the bishops of England and Scotland (form II, which, except in n. 2, 4, 5 and

12, is the same as form I) receive special faculties appropriate for those countries. The bishops of the United States receive special extraordinary faculties in Form C which contains that regarding parish priests. Could the Holy See do such a senseless thing as give bishops a faculty they can never use? This would be farcical and impossible. Therefore the Holy See recognizes that there are parishes in the United States. This doctrine is taught by the professors of law and others in Rome, among whom were Santi, De Angelis and at present Pierontonelli. Hence when the learned Putzer (comment 113, 2) says we have no benefices or parishes because also irremovable rectors hold their parishes and administer them *jure delagato*, he simply begs the question. In the United States at least irremovable rectorships may be considered parishes administered *jure ordinario* as shown above.

It is certain that parishes have been established in the Diocese of Detroit, for the late Bishop Borgess so intended and decreed in his synodal constitutions of 1886, and the decree establishing parishes, once issued, cannot be revoked. Personally I am sure of the mind and intention of the bishop, for as fiscal procurator, at his special mandate I drew up the decrees, and when they were presented to him for approval, decree n. 6 was specially discussed and its extension and effect fully appreciated as designating parishes. The only reservation the bishop desired made was regarding irremovability. He first intended inserting some words to that effect in decree n. 6; but later decree n. 11 was inserted, reserving the one right of irremovability. The originals of the

decrees with the notes of the bishop are still in my possession. The bishop himself officially published these decrees Sept. 15, 1886, after the III Council of Baltimore. Following are the two decrees:

No. 6. "Civitates, præsertim in quibus plures reperiuntur ecclesiæ, sed et omnem diœcesim in districtus quosdam dividendas, ordinis causa censuimus, divisasque declaramus; juribus tributis eorum rectoribus, ut scilicet ii vel eorum vicarii, sacramenta baptismi, matrimonii, extremæ unctionis et viatici, jus habeant ministrandi, illis qui intra *parœciarum* suarum limites degunt; nec alius quicunque sacerdos, sive sæcularis sive regularis, possit legitime se iis ministrandis ingerere absque Nostra vel parochi ipsius licentia."

Decree 7 forbids interference with the pastor's rights; decree 8 makes it obligatory for a priest, who has administered sacraments to another pastor's parishioners, to forthwith turn over to the pastor all offerings, and decree 9 orders all people to apply for sacraments to their own pastor. Decree 10 makes it a duty for pastors to attend the charitable institutions situated within their parish limits. Decree 11 is as follows:

"Parochialis juris, parœciæ et parochi nomina usurpando, nullatenus intendimus ecclesiæ cujuslibet rectori jus, ut aiunt, inamovibilitatis tribuere, nisi prout in Concilio Plenario III Baltimorensi statutum est de rectoribus inamovibilibus posthac constituendis; quibus exceptis missionarii rectores omnes ad nutum sunt amovibiles." Irremovable rectors were appointed in 1890 in a meeting of the diocesan clergy and the synodal decrees of 1886 were confirmed.

Decree 12 adds, "Cum rectoribus ecclesiarum *cura animarum* commissa sit, sacerdotes assistentes seu vicarii, quibusdam ecclesiis ab Episcopo adsignati, iisdem in omnibus quæ ad cultum divinum spectant subesse et obedire debent, &c."

So careful was Bishop Borgess on this matter that a copy of the synodal constitutions of 1886 was sent for record to the S. Congregation of the Propaganda, that there might be no question in the future regarding his action in this matter. Limits were defined between parishes and are well-known to-day. From the official acts of Bishop Borgess it is absolutely certain that parishes have been canonically erected in the diocese of Detroit. It will be noticed by comparing the above decree n. 6 with the II Council of Baltimore that the words "*parochiarum instar*" "juribus *quasi parochialibus*" which are found in the Baltimore Council and some diocesan statutes have been purposely omitted from the Detroit decree, thus explicitly giving full parochial rights and making real parishes instead of quasi-parishes.

90. The Third Council of Baltimore, in n. 33, while claiming that for the present it is still impossible to carry into effect all the prescriptions of the council of Trent regarding parishes, especially the perpetuity of tenure, nevertheless by order of the Holy See explicitly granted this perpetuity and irremovability to certain rectors. It seems sure that at least the rectors thus designated must be considered true parish priests; for their parish churches and people, as well as themselves, have been explicitly designated by the bishop, under instructions from the Holy See, and the right of irremovability canon-

ically conceded. The "Cum magnopere," n 45, terms them irremovable parish priests or rectors.

Moreover perpetuity of tenure, as well as other parish rights, is not a gratuitous and spontaneous concession of the bishops, but comes from the very law, which determines that benefices, even such as our rectorships, must be conferred not for a time or manually, but perpetually and irrevocably. When therefore the bishops of the Second and Third Plenary Councils of Baltimore stated that they did not intend to confer the right of irremovability on all rectors, they must be understood to say this, not as if they could change the common law, but as acting with the tacit consent of the Holy See which was pleased not to correct such a practice for the time being. (*Cf. DeAngelis, Prælectiones, lib. 3, t. 29, n. 3; Conc. Trid. sess. 24, c. 13, de ref.*)

91. Since only the Holy See in the plentitude of its authority can authorize that benefices, particularly having the charge of souls, may be conferred temporarily when the law distinctly requires that they be conferred perpetually, it is evident that no bishop, without special authority and permission of the Holy See can lawfully appoint pastors who shall be movable ad nutum. For this reason the bishops of France and Belgium, after the Napoleonic wars and the consequent change in parishes, wished to have their practice of appointing movable rectors to certain parishes approved by the Holy See. After carefully considering the circumstances, on May 1, 1845, the Sovereign Pontiff decreed that no change should be made until otherwise provided by the Holy See. (*S. Cong. Concilii, in Leodiensi, 1 Maii, 1845.*)

Thus there are in France and Belgium two classes of parish priests, one succursal and movable, the other practically irremovable. The same is true of the United States to-day. There are two classes of rectors, movable and irremovable.

92. As soon therefore as a bishop has designated a church and assigned to it a people within certain limits and given a certain and sole rector to it, then, according to the council of Trent, cap. 13, sess. 24 de reform., is had a canonically erected parish. These requirements being present, the law itself, not the will of the bishop, determines that there is a canonical parish, or parochial benefice. However, the bishop either confers this parish on some one as a title, and then the position of the incumbent is perpetual under the canons and he is said to be a true parish priest and a true beneficiary; or, on the other hand, the bishop while himself retaining the titles of parishes once constituted, gives only the administration of them to certain priests, who in this supposition are either perpetual or temporary vicars. To the first class being irremovable rectors, for the bishop confers on them not only the administration but the title of their parishes after being found worthy through concursus. To the second class may belong some if not all movable rectors of parishes. This will depend on their letters of appointment, (which should be carefully drawn and specify whether or not the priest is only a vicar) and on the tolerance of the Holy See in allowing bishops for a while longer to continue this exceptional discipline. Bishops have the right to appoint incumbents of movable rectorships real parish priests by their let-

ters, and the presumption of law is that also movable rectors are parish priests; hence the contrary, if intended, must be stated in each appointment. Irremovable rectors have canonical institution, but temporary vicars have only a deputation or appointment. Irremovable rectors can be moved only for canonical causes and after trial. Temporary vicars in the United States may be moved by the bishops "for grave reasons and with proper consideration for merit," and this without trial unless the reasons constitute crime and the removal would be a punishment. Before a movable rector or temporary vicar is removed as a punishment or deprived of his office he must be given a trial according to "Cum magnopere." (*Cf. S. Cong. de Prop. responsa ad dubia March 28, 1887.*) It should always be remembered that against the decree of the bishop removing a movable rector or temporary vicar there is no appeal, but only a recourse and that the removed cleric must vacate the office until restored by the higher authority. Recourse may be made to the Apostolic Delegation at present instead of the Propaganda. The reason why there is only a recourse is that the position of temporary vicars is not determined in law, and hence there is no ordinary remedy, but only an extraordinary one because of a certain unwritten, natural equity. The bishop is not obliged to give his reasons to the removed rector, but only to the authority to whom recourse is had. (*Cf. n. 106, below.*)

93. The division of the diocese into parishes, according to the canons and especially the council of Trent, was ordered for the better and safer government of souls and to afford the bishop certain

determined assistants compelled by reason of their office to assist him in the care of souls. Hence parish priests must acquire this participation from the bishop or the Sovereign Pontiff and no one else can give them authoritative institution. But the bishop's authority is not lessened by such participation, for whatever the parish priest can do the bishop also can do, because he does not cease to be the ordinary of that part of his flock. However, good policy suggests that he should not interfere indiscriminately in parish work, for undoubtedly episcopal duties differ from parochial work, and supervision differs from concurrent labor. Parish priests have participant jurisdiction, not in the exercise of the episcopal order nor in the external forum, but in the administration of all other sacred things, in regard to the people belonging to their parish. (*Cf. De Angelis, l. 3, t. 29, n. 4; Berardus l. c.*) Further, parish priests are said to be placed by law, because it is a precept of ecclesiastical law that a diocese be divided into parishes and that parish priests be assigned to them, and secondly because their authority is determined by law and therefore is said to be ordinary. For this reason, says De Angelis, l. 3, t. 29, n. 4, it is admitted that parish priests can sub-delegate this authority, either for certain acts or *ad universitatem causarum*, by appointing assistants with the approval of the bishop. Again, since parish priests receive jurisdiction from the law, a bishop cannot stop the exercise of this jurisdiction by merely "withdrawing faculties," as it is called. The bishop can in this way only withdraw what he gave voluntarily, but he cannot thus with-

draw what the law gave. He must for this purpose properly suspend the incumbent and specify exactly the extent of the suspension.

94. The council of Trent, sess. 21, c. 4, de reform., enacts that when a parish priest cannot alone attend to the spiritual wants of his parishioners, the bishop, also as the delegate of the Holy See, is given power to compel the rector to employ as many assistants as will suffice to attend the people. Concerning these assistants Pope Innocent III issued a bull "*Apostolici Ministerii*" which Benedict XIII ordered observed, to the effect that, "the bishop shall determine the portion of the parish revenues which shall be assigned for the maintenance of the assistant, with proper regard for circumstances. And if the parish priests after warning by the bishop neglect to engage assistants, the bishops themselves may then appoint such assistants as they deem fit and assign them competent support from the parish revenues. Nevertheless when the parish priests have selected their assistants, before they are admitted to act their fitness must be determined by an examination. If rejected as unfit by the bishop, the parish priests must select others, or in default the bishop will appoint." From which text it follows plainly that the parish priest may choose his own assistants when needed; but when a vicar is appointed because of a fault in the pastor, for instance, if he is suspended *ex informata conscientia*, then the nomination devolves on the bishop. (*S. Cong. Conc. 4. Maii 1737.*) Zitelli, who wrote his *Apparatus Juris Ecclesiastici* especially for the United States and similar countries, and who at the time was the official of the

Propaganda, distinctly lays down the same doctrine on page 187, where he says, "the nomination of temporary assistants belongs to the pastors, but the examination and approval of them pertains to the bishop." There is no law which reverses the common law for the United States. Hence it holds.

95. This seems but proper, especially considering that the pastor is really responsible for his parish and that he has ordinary right to it by law. Again, since usually in the United States the assistants live in the same house as the pastor, he should be allowed to determine who shall belong to his household, who shall eat at his table. For these reasons whatever may be held concerning the nomination of assistants to a parish priest, it seems certain that he may object to receiving into his house or retaining therein any assistant who is personally offensive; nor can the bishop impose such assistants upon him, except according to the bull above quoted. DeAngelis lib. 3, t. 5, n. 27, says that in parts of France and adjoining countries, where generally assistants live separate from the pastor, a departure has been introduced from the practice of parish priests naming their assistants. There the bishops appoint and remove them without hearing the pastors. But, he says, this is because of the special manner of admintering these dioceses in which the bishop alone is responsible for the support of his clergy and must sustain them himself until he provides them with some office. He adds that this practice which by long custom and the tacit consent of the Holy See may be licit in a certain place, should not and cannot be introduced in other places against the canons.

Craisson, however, who was a vicar general in France, does not sustain any such custom, but in his *Manuale, nos. 1059 and 1337* lays down the law that the pastor may choose his own assistants. Bouix, *De Parocho, page 427*, maintains the same right for the pastor. The S. C. Conc. in Melit. 7 June, 1692 decided that the parish priest, not the bishop, has the right to appoint a deputy to have charge of the parish in the absence of the pastor.

96. There is a great difference between an assistant and a coadjutor. The pastor chooses the former, but the latter is a priest, who is assigned by the bishop for reasons determined by law to assist the pastor in the exercise of the care of souls. The reasons for appointing a coadjutor are: Long continued ill health of the pastor in body or mind, the defect of sufficient knowledge, provision during the pastor's suspension for a fault. The large number of parishioners is not a legal reason why the bishop may appoint a coadjutor, but only a reason why he may compel the pastor to select an assistant. A suspensive appeal will lie against the bishop's decree appointing a coadjutor to a pastor because of his ill health; but only a devolutive appeal if the coadjutor is appointed because of defective knowledge, since the council of Trent so declared for this latter case.

97. Parish priests have both obligations and rights. The council of Trent decrees that a parish priest must make a profession of faith before the bishop or his vicar general within two months from his appointment. This applies to those pastors who are movable ad nutum as well as to those irremovable.

They are also bound to reside within their parishes, and in the rectory if there is one. If a priest has two parishes united, he must reside in the more worthy. However, the council of Trent allows that when there is a canonical cause the bishop may grant the parish priest leave of absence, provided he leave a competent vicar to take his place and assign him proper compensation.

The parish priest is obliged also to offer sacrifice, preach and administer the sacraments for his people. All those who have a pastoral title are obliged to say mass and apply it for the people committed to them. Thus bishops for their diocese, and all for their charge, who possess a benefice with the cure of souls, that is, parish priests by whatever name they may be called. They also are under this obligation who are actually in charge or administer a parish that is either vacant or the habitual care of which is in another, which is claimed by some to be the condition of our movable rectors. Such also are vicars of parishes either perpetual or temporary. All these are obliged to apply their mass for their people on Sundays and feasts of obligation even those now suppressed. Missionary priests are not obliged to apply their mass for their people, except those who take the place of pastors in those places where episcopal sees and parishes have been canonically erected. (*S. C. Prop. March 28, 1803. March 23, 1863.*)

98. Pastors are also obliged to preach and instruct their people, old and young. Neither should they allow any others to preach in their church unless they know them either personally or by letters of the

bishop. A pastor is also bound to administer the sacraments to his parishioners not only from charity but from justice. He is also obliged to keep record books for baptisms, marriages, deaths and a book *de statu animarum*, as well as proper account books for temporal matters.

99. The right of administering baptism pertains exclusively to the pastor, except in case of necessity, and no other priest can licitly confer it. The same holds true of holy communion by way of viaticum, and at Easter time, as well as the first communion of children. The last sacraments must be administered by the pastor, and the solemnization of marriages also pertains to him alone. Certain blessings are reserved for him, as the blessing of ashes, palms, candles, the baptismal font and the celebrating mass on Holy Thursday; but in all these cases he may delegate others. Funerals likewise belong to the parish priest to conduct, and offerings therefor are his by law. What formerly were personal tithes, but now are called *jura stolæ* offerings, must go to the pastor of the person receiving the sacraments. These two principles are laid down by law: personal tithes or *jura stolæ* must be paid by all the faithful to the pastor from whom as subjects they must receive the sacraments, unless they are specifically exempt; and those who do not pay their tithes or dues to their pastor commit a mortal sin, as do also those who impede others; and according to Sess. 25, c. 12 of the council of Trent they are to be excommunicated and cannot be absolved until they have satisfied. (*Cf. DeAngelis, l. 3, t. 30, n. 4.*) The Sacred Penitentiary has recently rendered a decision

to this same effect, which by some has been applied to the payment of pew rent or dues to the church as well as *jura stolæ* to the pastor. They maintain that the fifth precept of the church imposes an obligation of justice, which must be satisfied before absolution can be granted. They further contend that a pastor, in justice to his successor, may not inconsiderately remit these obligations due by each and all of the faithful, but that he is bound prudently to enforce them. Whether such policy is proper is left for others to decide.

The S. C. Prop. May 13, 1816, replied to the Bishop of Bardstown that "the faithful are bound in conscience to provide sufficient support for the ministers of the church. But it is unworthy of an ecclesiastic and a matter meriting adimadversion to refuse sacred things and even baptism to those who decline to submit themselves to the debt of offerings." (*Cf. Collect. p. 82, n. 224.*)

The administration of the temporal affairs of a parish belongs to the pastor; he only is held responsible. He may for safety have others associated with him, but the law holds the pastor for an accounting. From the revenues he must assign a competent support for his assistants if he has any. In the United States $300 a year and board is the usual allowance for an assistant, with of course full control over his *intentiones manuales*. But by law an assistant is not entitled to any perquisites. In some dioceses an arrangement has been made in synod, specifying a division of revenues. When ordained *titulo missionis* a priest is entitled to congruous support from his diocese and from the bishop who or-

dained or incardinated him. He can insist on this right before the ecclesiastical courts; but when appointed to a parish he can make no further claim on the bishop, unless the revenues are entirely insufficient. The civil courts do not hold the bishop responsible for the priest's salary. (*Rose vs. Vertin*, *46 Mich. 457*. *Tuigg vs. Sheehan*, *101 Penn. 363*.)

100. In the United States, at the present time, there are no reserved parishes, nor any with *jus patronatus*. The bishop of the diocese has the free collation of them all whenever a vacancy occurs. However, a priest to be appointed to the care of souls should be at least twenty-five years old and conspicuous for virtue, morality and knowledge. The council of Trent, elaborated by many apostolic constitutions, insists that only those shall be given charge of parochial churches, who shall have been found the most worthy through a concursus and a solemn examination of all the candidates before at least three synodal examiners, together with the bishop or his vicar general.

From the law of concursus are exempt: Churches in which the care of souls belongs to a chapter or a collegiate body and the actual charge is exercised by a dignitary, canon or other cleric; churches which have been resigned to the bishop or the Sovereign Pontiff in favor of a certain person with a change of benefice, and churches subject to lay *jus patronatus*. Parishes also of very scant revenues, i. e., those which do not exceed (20 aurei de camera) about thirty-five dollars, after deducting expenses; new parishes, but only for the first collation, and parishes twice exposed for concursus without any candidates

applying. (*Cf. Santi, l. 3, t. 5, n. 72.*) Still none of these should be conferred without some examination. (*Cf. Reiffenstuel, l. 3, t. 5, n. 146.*) Only the bishop may call a concursus, or in case of vacancy in the see, the vicar capitular or administrator.

101. In the United States a concursus is necessary before the bishop may appoint a pastor to any vacant irremovable rectorship. (*III. Plen. Council, n. 40, et seq.*) A concursus is not of necessity at present before appointments to movable rectorships, on the supposition that their incumbents are temporary vicars, to whom the title does not pass, though they actually perform the work, but it remains in the bishop. How long this condition shall continue will depend on the tolerance of the Holy See. No one, however, will question the advisability of filling such positions with the best possible candidates. Neither is it out of place for priests to apply for such positions when vacant, particularly if an examination is held before appointments are made.

102. A concursus is a competitive examination held before the bishop or his vicar general and certain persons called synodal examiners. These examiners, at least six in number, were ordered by the council of Trent, sess. 24, c. 18, de ref. to be proposed by the bishop or his vicar general in diocesan synod each year and to be such as are satisfactory to the synod and approved by it. These examiners should be masters or doctors or licentiates in theology or canon law or if such cannot be had, then other clergyman secular or regular who may seem best qualified; and they are obliged to take an oath to fulfill their duty without any human consideration. They are de-

clared guilty of simony if on the occasion of examinations, either before or after them, they accept anything whatever. The election in the synod should be by name and surname and each person should be singly proposed, not all together, otherwise their nomination would be null. (*Cf. Monacelli, tom. 1, t. 5, n. 16.*) Once appointed they hold office until the next synod, even though the year closes for which they have been chosen. (*S. Cong. Concilii, in Imol. 10 Dec. 1695*) The Third Council of Baltimore, n. 25, says that with previous permission of the Holy See, a bishop can choose examiners outside of synod, having heard his consultors. Further if by death, resignation or other cause a vacancy occurs, the bishop with the advice of his consultors may fill it. The examiners are to take the oath before the synod if appointed therein, and before the bishop or his vicar general if otherwise selected. At least three examiners must be present in each concursus. They may also be used for the examination of candidates for orders, for examination before approval of confessors and for the examination of the junior clergy.

103. The rules for the concursus have been laid down by Benedict XIV in his constitution *Cum illud*, and are explained for the United States in the Third Plenary Council nos. 40 to 59. When an irremovable rectorship becomes vacant, the bishop will immediately appoint an administrator, and later announce the vacancy to the diocesan clergy by calling a concursus. He will give ten days or even twenty, for candidates to file their applications. By special faculty of the Holy See, given for ten years from

Jan. 6, 1886, (and renewed to individual bishops) thirty days may be given instead of the usual ten. The vacancy must, however, be filled by appointment within six months. Only priests of unblemished character who have served at least ten years *in the diocese* and have ruled as movable rector at least three years or have otherwise given evidence of ability to administer spiritual and temporal affairs, may be admitted to compete. All competitors must within the specified time file application with the bishop who will judge of their admission.

The examination will be in moral and dogmatic theology, liturgy and canon law especially on practical points. A catechetical lesson will also be required and a short sermon. The questions will be proposed to all competitors at the same time and a limited term granted for reply. The competitors will meet in the same room under a prefect and none except the competitors and prefects will be allowed in the room, nor will any be permitted to leave during the examination except for necessity. Each competitor will write his answers and sign them; they will then be signed by the notary of the concursus and each of the examiners and by the ordinary. In forming an opinion of the competency of the candidates not only their knowledge but their other qualities must be considered, such as experience and capacity in temporal affairs, prudence in conduct and fairness in disposition. The examiners may only announce to the bishop the names of all whom they find competent without specifying the most worthy. The examiners must give their opinions before they leave the place of examination.

The bishop or his vicar general will not take part in this judgment on the examination except in case of a tie vote when he may decide.

104. When a judgment has been given by the examiners the vacant parish must be given to one of the approved candidates, the bishop having the selection. If the bishop has secret information against a candidate he may pass him by and choose another of the approved. This concursus is a necessary prerequisite for appointment to an irremovable rectorship, except when it is first established, or in case the bishop desires to appoint a priest (who has been *once examined*, S. C. Prop. Oct. 10, 1884) concerning whose knowledge he has abundant proof on account of his dignity and long service to the church; but in this case the bishop must first hear the opinion of the examiners. Such collation, however, unless explained, is liable to create ill-feeling and criticism. If it is deemed wise, the examination regarding knowledge may be separated from the other examination. This is the practice in many parts of Germany. Each year an examination is held for aspirants to irremovable rectorships, and all those who pass are in that respect considered competent for appointment to any vacancy within six years from the time of the examination. At the expiration of six years they must be re-examined if not yet appointed. When a vacancy occurs, the examination is only regarding other qualities. (*Cf. Zitelli App. Juris Ec. p. 173; Inst. S. Prop. Oct. 10, 1884.*)

105. When an irremovable rector is once appointed he cannot be removed except for canonical cause and after trial. If he is suspended *ex informata con-*

scientia an administrator is to be appointed, but the rector retains possession. The causes called canonical are specified in law, but the Third council added several special ones, such as pertinacious disobedience in a serious matter regarding temporal administration, persistent refusal to keep up a catholic school, temerarious and repeated running into heavy debt, collusion with the church lay trustees regarding a note for money due the pastor, fraudulent deceiving of the ordinary in the yearly report in a serious matter to the grave injury of the parish, public defamation of character tending to grave danger for souls; and finally incompetence in administering the parish. In such last case the rector should be induced to resign; and if he refuses, a vicar according to law should be appointed. But if this is impossible then for a very grave reason legally shown, the rector may be removed and a competent pension assigned him with the title of "rector emeritus."

106. The trial of an irremovable rector must be conducted according to the instruction "Cum magnopere." According to the common law of the church, if convicted in the diocesan court, he has a suspensive appeal to the higher court and retains full possession until the final sentence. Any limitation of this right is odious and therefore of strict interpretation. There is no limitation in canon law itself, but in n. 286 of the Third Plenary Council of Baltimore one exception is made and the reason of the exception is given in the decree itself. The exceptional case is when the irremovable rector is also a trustee of the parish property before the civil law. In such a case in order to remove him from his civil

trusteeship, the council, as it says, with the permission of the Holy See, decreed that such an irremovable rector should not be allowed a suspensive but only a devolutive appeal, "so that he immediately on conviction in the diocesan court shall cease to be a parish trustee before the civil law." The one and only object of the decree, as expressed in the decree itself, is to remove such rector from his civil trusteeship. The decree must therefore according to all rules of interpretation be confined to this one case. Therefore it has no application to an irremovable rector who is not a civil trustee, and therefore the common law obtains in such case, and he has a suspensive appeal. This interpretation of the decree is only scholastic not official, since no case under it has yet been decided. It may be added that the Third Plenary Council in its decrees has not been approved by the Holy See as was the First Plenary Council (*S. Cong. Prop. Sept. 26, 1852*), but was only revised and allowed to be promulgated. Hence, there being no special sanction of the Holy See for decree 286 nor any apostolic constitution issued specially on the matter, the force of the decree when compared to the common law of the church, which it attempts to reverse, must be confined to the least possible limits and be given the strictest possible interpretation.

Therefore also the "*Nullum* rectorem etiam immovibilem" cannot be given a wider extension than is contained in the preamble to the decree which gives the reason for making such an exception to the common law of the church.

When a rector is removed and appeals in devolutivo an administrator must be appointed pending the

final decision, and proper support must be assigned to both the rector and the administrator. When an irremovable rector, who is also a civil trustee, is removed and appeals, according to the above interpretation, it seems doubtful that he is bound to vacate anything but his office of civil trustee and consequent administration. It seems he still retains the title of his benefice and may quietly remain in the rectory. But not so in the case of a movable rector. He must vacate. Should he refuse to vacate and thus impede the exercise of ecclesiastical jurisdiction he falls under the excommunication *latæ sententiæ*, of n. 6, "Apostolicæ Sedis." But before issuing a declaratory sentence the bishop should cite him to show cause. (See nos. 334-335 below.)

107. The following form of proposing to the synod the various synodal examiners may be used:

"Cum ex Concilio Tridentino, sessionis vigesimæ quartæ capite decimo octavo, pro ecclesiis parochialibus vacantibus in diœcesana synodo ab Episcopo ad minus sex viri, qui sint magistri, seu doctores, aut licentiati in theologia vel jure canonico, ex clero sæculari vel regulari proponi debeant, ut ab eadem synodo probentur; cumque idem ex Tertio Concilio Plenario Baltimorensi, capite sexto, pro rectoratibus irremovibilibus sit constitutum; Nos decreta laudata exequi volentes pro diœcesis nostræ amplitudine delegimus et vobis proponimus infrascriptos Reverendos viros, quorum officium duret et munus hoc examinatorum synodalium gerant donec altera synodus habeatur; videlicet:

Rev. D. N. N. juris utriusque doctor, rector irremovibilis, &c.

Rev. D. N. N. sacræ theol. magister, rector irrem.

Rev. D. N. N. s. theol. licent, professor in seminario.

Rev. D. N. N. rector in civitate nostra.
Rev. D. N. N. rector in urbe N.
Rev. D. N. N. rector ecclesiæ S. N— in N—."

When each name has been separately submitted and voted on, either by secret ballot which may be demanded (*Cf. Monacelli t. 5, f. 3, n. 18*) or by a viva voce placet, then a notation is made to that effect on the document itself and a canonical election of examiners has been held. The document is published with the synod; nothing else is required. A similar form may be used for appointment out of synod, but proper publication, after it has been signed and sealed, must be effected of the appointment thus made:

108. A form follows for announcing a concursus:

"To the clergy of the Diocese of N—. Greeting: The irremovable rectorship of St. N. in the city of N— has become vacant by the death (resignation) of its latest incumbent Rev. N. N. on the —— day of —— 189—. Therefore in accordance with the prescriptions of the council of Trent and the Third Plenary Council of Baltimore (and by virtue of the faculty granted Us by the Holy See on —— of —— A. D.— for extending the time) We have ordered these letters to be expedited and affixed to the door of the vacant church and of our cathedral and to be published; by which We summon, require and admonish all of our diocese who wish to enter the concursus for the aforesaid vacant charge to appear before Us in the city of N— within ten (thirty) days from the publication of this notice and to give their names and have themselves inscribed by our chancellor among the contestants, for at the expiration of the said ten (thirty) days on the —— day of—— A. D.—— in our episcopal residence the concursus of those inscribed will be held before the synodal examiners, and the

aforesaid cure will be conferred on the one found more worthy. Given &c.

N. Bishop of N. (or the vicar general.)

[L. S.] N. N. Chancellor.

An official publication must be made of this edict: a newspaper publication is hardly sufficient. The bishop's name, or in his absence that of his vicar general must for validity be affixed to the notice. In the United States only those in the diocese for ten years are allowed to compete.

109. The following form may be used in appointing an irremovable rector after concursus:

"N.—Episcopus N.— Dilecto &c. Inter cætera quæ pro pastoralis officii debito præstare cupimus, illud præcipue cordi est, ut parochialibus ecclesiis, quibus de rectoribus providendum est, tales præficiamus qui ministerio curæ animarum, quod omnium gravissimum est, laudabiliter satisfaciant. Vacante igitur nuper de mense N. proxime præterito parochiali ecclesia sub invocatione S. N. in oppido N. hujus nostræ diœcesis per obitum (vel alias) N. N. illius, dum viveret, ultimi possessoris, fuerunt per curiam nostram, mediante publico edicto juxta formam et præscriptum Sacri Concilii Tridentini et Tertii Concilii Plenarii Baltimorensis, vocati omnes de sic vacante ecclesia provideri cupientes, quatenus intra terminum decem (vel alias prout in edicto) dierum comparerent in eadem curia ad faciendum describi et adnotari nomina ipsorum; et cum in eodem termino plures comparuissent, tandem iisdem legitime vocatis sub die——, coram Nobis rigoroso prævio examine per tres examinatores synodales facta fuit experientia de scientia et sufficientia singulorum descriptorum oppositorum, ac demum, servatis de jure servandis, fuisti per dictos tres examinatores repertus, habitus et existimatus idoneus vita, moribus, ætate et scientia, et aliis a jure requisitis præ-

ditus, et ut talis ad dictam parochialem ecclesiam, ejusque curam per te ipsum regendam ab iisdem Nobis renunciatus fuisti, et successive a Nobis magis idoneus reputatus et judicatus; Nos igitur eidem ecclesiæ ac animabus illi subditis de rectore providere volentes, tibi quem præ cæteris digniorem delegimus eamdem parochialem cum illi annexis, ac omnibus juribus, et pertinentiis suis universis conferimus et assignamus, de illaque te coram Nobis flexis genibus constitutum et acceptantem per bireti capiti tuo impositionem investimus. Quo-circa omnibus notariis publicis et personis ecclesiasticis civitatis et diœcesis nostræ per præsentes mandamus et committimus, ut cum pro parte tua fuerint requisiti vel eorum aliquis requisitus, (emissa per te prius coram vicario nostro generali professione fidei,) ad ipsam parochialem ecclesiam dicti loci N. accedant, teque vel procuratorem tuum in corporalem, realem et actualem possessionem prædictæ parochialis ecclesiæ ac omnium illi annexorum et pertinentium inducant auctoritate nostra et inductum defendant, amoto exinde quolibet illicito detentore, quem Nos harum serie amovimus et denuntiamus amotum, ac de fructibus, redditibus, proventibus et obventionibus universis tibi faciant debito tempore responderi. Volumus autem, ac præsentium tenore declaramus per hujusmodi parochialis pacificam possessionem, alteram parochialem ecclesiam (missionem) loci N. quam obtines eo ipso vacare. In quorum &c. Datum &c.

[L. S.] N. N. Canc. Episc. N. Episcopus N.

110. The following form may be used for appointing a movable rector, or temporary vicar for a parish:

"N— Bishop of N—, to our beloved, &c., greeting: Since the church of St. N— in the city (town) of N— in our diocese has become vacant by the death (resignation, transfer, promotion) of the Rev. N. N. its former pastor, and since for the good of souls it

is necessary that we provide a pastor for the said church, who shall be our vicar and movable ad nutum; we therefore, having confidence in your knowledge, piety, prudence, experience and general character, do by these presents appoint you to the said vacant church with its care of souls, until otherwise decreed in writing; granting you all and singular the necessary rights and powers as movable rector of the said church in accordance with the Plenary Councils of Baltimore and our diocesan statutes. Further we command all whom it may concern to recognize you as such pastor and rector and give you all necessary assistance. In testimony whereof &c.
Given &c. N. Bishop of N.
[L. S.] N. N. Chancellor of Bishop."

111. If it becomes advisable for grave reasons to transfer a movable rector, he should if possible be brought to consent; and proper consideration in any event must be given to his merits. Prudence dictates that he should either be given somewhat of a promotion or at least an equivalent charge. In the form for transferring no reasons need be given, for in case of recourse they had better be expressed only when demanded by the higher authority:

"N— Bishop of N—, to our beloved, &c., greeting: In the proper management of our diocese, for reasons known to ourselves, and having taken full consideration of your past merits, we have determined to relieve you of the pastoral charge of the church of St. N— in N— and we do hereby relieve you of said charge and declare the said church vacant; and we signify to you our intention of appointing you to another charge, which appointment is conveyed by letters of even date with these. In testimony whereof, &c. Given &c.
[L. S.] N. N. Chancellor. N. Bishop of N."

112. An assistant may be given letters after the following form :

"N—, Bishop of N—, to Rev. N. N., beloved in the Lord, greeting :
The Rev. N. N. pastor of the church of St. N— in N— having signified to us his desire that you be assigned as his assistant, we, being assured of your competency, do hereby approve of you for that position and consent that you be assistant in said parish in accordance with the diocesan statutes, until otherwise ordered by us. In testimony whereof, &c. Given, &c.
[L. S.] N. N. Chancellor. N. Bishop of N."

113. When an administrator is to be appointed for a parish during a vacancy, this form may be used:

"N—, Bishop of N—, to Rev. N. N., beloved in the Lord, greeting:
The parish and church of St. N—, in the city of N—, having become vacant by the death (resignation, transfer) of Rev. N. N., its last pastor, we wishing, as is required by law, to provide for its proper care during the vacancy, do hereby select and appoint you, in whom we have confidence, to be the temporary administrator of the said vacant parish, and we assign you out of its revenues the monthly sum of —— dollars as salary together with the perquisites usually received by the pastor, giving you all the necessary powers of such administrator and commanding all whom it may concern to acknowledge you as such, until possession is taken in proper form by the pastor to be later appointed. In testimony whereof, &c. Given, &c.
[L. S.] N. N. Chancellor. N. Bishop of N."

CHAPTER II.

PARISHES, CHANGES IN THEM, PENSIONS.

114. The erection of a benefice is defined: "A legitimate act, by which some sacred office or ministry is arranged to be performed by a cleric in a certain church or at some altar, with a permanent income which the cleric will receive in his own right for the purpose of supporting himself and sustaining the expenses of the benefice." A parish is a benefice with the care of souls attached. Parishes may be erected by the bishop of the diocese, provided certain conditions are observed. They may be erected by creation, i. e. by assigning to the new parish territory not yet belonging to any parish, which is a usual method in missionary countries, by detaching territory from one or several parishes and making a new one thereof; by uniting two or more parishes into one.

115. It is universally held that the large number of parishioners is not in itself a sufficient reason for dividing a parish. In such a case the parish priest can be obliged to accept assistants sufficient in number to attend to the wants of the people. As a last resource, however, a parish may be divided, provided certain solemnities be observed. The council of Trent (*sess. 21, c. 4, de refor.*) says: "As regards those churches to which on account of the distance

or the difficulties of the locality, the parishioners cannot without great inconvenience repair to receive the sacraments and to assist at the divine offices, the bishops may even against the will of the rectors, establish new parishes." Thus necessity or great utility for the people are considered sufficient causes for dividing a parish and erecting a new one. A regular process should be instituted showing this necessity or utility before the decree of division is drawn. The bishop either personally or through his vicar general should ascertain formally that the necessity or great utility for the division exists; the rector and the parishioners of the parish to be divided should be summoned and heard that no injustice may be done; the bishop in the United States must take the advice of the diocesan consultors, (*III Plenary Council Baltimore*, *n. 20*,) and where there is a cathedral chapter its consent is necessary; the bishop in his decree must fix the limits of the new parish either territorially or by designating families; a competent support must be assigned the new pastor either out of the revenues of the mother church or by assessment on the new parishioners or otherwise. It requires at least ten families for the formation of a parish.

116. The decree of dismemberment of a parish is considered odious in law (*Communis DD.*) and therefore must be strictly interpreted. But an appeal against it is not suspensive but only devolutive. (*Cf. Const. Ad militantis, on appeals.*) Not only the parish priest may appeal against dismemberment, but anyone of the people of the parish may undertake the cause even against the wish of the

pastor if he neglects to oppose dismemberment. (*Cf. S. Rotæ R. Decis. Rec. 24, n. 4, p. 3, decis. 54.*) The same tribunal has decided that the necessity or the evident utility of the dismemberment must be proved by the bishop and a mere presumption will not suffice. (*Decis. 116, n. 13, p. 13.*) Further it decided that the reasons given must be true at present, not merely probable for the future. If the dismemberment should inflict a vital injury on the old parish, or if the new parish should be unable to support itself, it seems certain that there is no "evident utility," but, on the contrary, great injury in the dismemberment. No precise rules can be laid down either as to the distance or the inconvenience required for dismemberment. Two miles or a mile and a half is considered sufficient, and country missions may be separated from a parish as soon as they are able to support a priest. The bishop is the competent judge in the matter. In the same way a union of parts of two or more parishes may constitute a new parish, if sufficient support is at hand. A petition and subscription of the people interested is a good guarantee on this head. Likewise two parishes may be united into one, not temporarily but perpetually, by the bishop if the conditions given above are present. The chief cause for such a union is the poverty of the parishes. In dividing a parish canonically erected, the bishop is strictly obliged to follow the council of Trent; but in dividing a mission, after taking the advice of the rector and the diocesan consultors, his judgment of the necessity of dismemberment has great weight. (*Cf. Rom. Pontif.*)

117. Dismemberment is a species of alienation, and

hence strictly the consent of the Holy See is required. Parish property, as all other church property, may not be alienated, sold, mortgaged or given away without necessity or evident utility, and the previous consent of the Holy See. This applies to a renewal of a mortgage as well as the first giving it. In the United States, the bishops in managing loans and mortgages on the church property of the diocese or of parishes must take the advice of the diocesan consultors, and the permission of the Holy See is also a necessary condition. However, by special faculties granted for ten pears from Jan. 6, 1886, (and renewed to the individual bishops) the Holy See on account of peculiar circumstances has waived the necessity of the previous apostolic beneplacitum for such alienation and allowed the bishops to act without it, on condition that for *each* case they first ask the advice of their consultors, in collegiate meeting, and that they report every three years to the Propaganda the various mortgages and other transactions as well as the exact condition of the parishes for which debt was thus contracted. (*Cf. III Coun. of Balt. page c 111.*) It seems scarcely necessary to state that the advice of the consultors cannot be obtained by interviewing them individually; the council specifically requires collegiate action of which a proper record must be kept.

118. While the limits of parishes in general should not be changed, more serious reasons are required for dismembering an irremovable rectorship, than for one not so designated; because its revenues were a matter of consideration and necessary assurance before the church was given the privilege of irre-

movability. As mentioned in the previous chapter, there are two kinds of rectorships in the United States, movable and irremovable. A parish must have a congruous church, school, presbytery and assured revenues sufficient for the support of the pastor, church and school, before it can be made an irremovable rectorship. The law says that for the present one tenth of the parishes or rectorships of each diocese shall be made irremovable, but adds that this proportion should not be inconsiderately increased before the year 1906. The law also says that irremovable rectorships must be established in the above proportion before Jan. 6, 1889. The conditions on the part of the person to be appointed are ten years' honorable service in the diocese, experience in managing the temporal and spiritual affairs of a parish, and a satisfactory examination in the concursus. However, for the first time, irremovable rectors may be appointed by the bishop without concursus but with the advice of the consultors. (*Cf. III Pl. C. Balt. nos. 34-37.*)

119. From these decrees it seems certain that any movable rector, who has the required competence and whose parish has the proper conditions, may demand of the bishop that he be declared an irremovable rector if one tenth of the parishes of the diocese are not yet irremovable rectorships. The law insists that these rectors—one in every ten—be made irremovable before Jan. 6, 1889. If this has not been done a recourse to the Propaganda will bring it about. Neither are the conditions laid down by the decrees to be extended but rather mitigated, since the establishment of such rectorships is an ap-

proach to the common law, not a departure from it.

120. The Third Council of Baltimore, n. 38, enacts that the bishop shall provide a pension with the title of "rector emeritus," for an irremovable rector who is either removed or resigns voluntarily, said pension to be such as with the advice of his consultors the bishop shall deem congruous. This pension may be payable, with the consent of the Holy See, by the parish which the rector assigned, or from the fund set apart for infirm priests. Such a fund is ordered by the same council, n. 71, to be collected by a tax on all the parishes of the diocese, even those in charge of religious communities, and to be apportioned for the support of the infirm and aged priests who were ordained *titulo missionis* for the diocese, and whom it therefore is bound to support. When a priest has become a rector and faithfully served the church for years, right reason and the sense of mankind will not allow that he should be degraded because of old age to the position of an assistant or chaplain, or be refused support and a pension from the diocesan fund. When the resignation of his parish is accepted, by that fact he becomes a pensioner. If he willingly performs some work as chaplain, this fact should not influence or be allowed to influence the pension to which the law entitles him without a degradation. However, sometimes the poverty of the diocese is alleged for such methods. Priests ordained by the title of mission who after trial have been definitely removed from their office, are still entitled to support from the diocese until by regular process they are shown, after many attempts at reform, to be incorrigible. Only then may they be

denied support. Before this time they should be maintained in monasteries or other houses at the order of the bishop, even while under censure. (*III Pl. Council Balt. n. 72.*) Priests who because of old age, infirm health or other cause draw a pension are subject to the orders of the bishop like others and may be forced under pain of censure to reside in their own diocese. Whether priests derelict in duty may without trial be condemned by the bishop to live in some monastery outside the diocese where he has no jurisdiction and cannot give the priest even a "celebret" is left to others to determine. It seems like banishment, which is a very severe punishment.

121. The following form may be used in establishing a parish church:

"N—, Bishop of N—. Since in our visitation recently made We noticed that there is no parish church in N— in which the faithful residing there may receive the sacraments and hear the word of God; and being desirous of providing for the salvation of souls and of obviating the evils which arise from the absence of a stationed pastor; considering also the petition of the inhabitants of the aforesaid place for a parish church and their subscription made and registered in our chancery that they will each year pay a certain sum for the support of the pastor and the parish church, house and other necessities, until otherwise provided, (since funds cannot be provided by assigning part of the revenues of the mother church or endowments;) therefore, invoking the name of our Lord Jesus Christ, and of His mother the ever blessed Virgin Mary, We hereby erect by our ordinary authority and every other best way, the church of N— under the invocation of Saint N— of this our diocese into a parochial church and We wish and declare it to be thus erected, and after it shall have

been provided with a decent tabernacle and other necessaries for the sacraments, as We ordered in our visitation, We command that the Most Blessed Sacrament be kept at the high altar, and a baptismal font, holy oils and other things necessary for a parish church be retained in proper places. Further We concede and decree that the said church shall enjoy all the rights and privileges which by law parish churches enjoy, with the subscriptions and revenues promised by the aforesaid parishioners, and all other offerings, alms and revenues, certain and uncertain, conceded and permitted by the canons to such a cure; and We declare and decree that the said church is not subject to any *jus patronatus* whatever, but that it pertains to the free collation of ourselves and our successors in office, according to the form provided by the councils of Trent and Baltimore for concursus.

"But that the aforesaid church thus newly erected into a parish church may be provided with a competent rector who may rule and guide the people in spiritual matters and the care of souls, and who will be obliged to celebrate mass on Sundays and other festive days of obligation for his flock, and administer the sacraments of penance and Holy Eucharist as well as join his parishioners in matrimony in the aforesaid church and teach the rudiments of faith; We hereby choose and set over the said church our beloved in the Lord, N. N., a priest found worthy and competent by Us and our synodal examiners; and We commit to him the cure, rule and administration of the sacraments, and confer upon him the said parochial church thus newly erected; commanding all notaries and all whom it may concern to hold and recognize him as such pastor, and, after he has made a profession of faith before our vicar general, to assist him or his procurator in taking formal and actual possession of the said parochial church, and We wish and hereby declare that the other church of

N—, which he now holds shall, by the said taking peaceable possession of his new cure, become vacant. In testimony whereof, &c. Given, &c.

[L. S.] N. Bishop of N.
N. N. Chancellor."

"The above decree of (dismemberment and) erection of the parish church of N— was read, made and published in the episcopal residence on —— day of—— A. D. —— in the presence of —— witnesses.

N—, Witness. N—, Witness.
N. N. Bishop's Chancellor."

122. The usual method of creating parishes in the United States is to cut off certain territory from existing parishes, and, without assigning any yearly revenues from the mother church, to arrange a subscription to be paid by the parishioners thus cut off and attached to the new parish. Sometimes a certain sum is ordered paid by the mother church to the new parish, without, however, giving the mother parish any right over the new one. The process mentioned should be carefully drawn that in case of appeal a proper defense may be made. The following form may be used for the decree:

"N—, Bishop of N—. Willingly encouraging everything which can remove danger from souls and afford relief to the people committed to Us, and being moved by the prayers of the catholic people of N—, who have sorrowfully informed Us that because of distance, (railroad crossings, &c.) it is only with very great difficulty and danger, if at all, that they can receive the sacraments and attend mass in the parish church of N—, to which they belong; that especially the old, the infirm and the young can rarely for these reasons assist at the divine offices; nor can the children, as is required, attend the parish

school; (having, moreover, obtained the consent of the pastor of said parish church of N— and of our cathedral chapter, consultors) We have determined to proceed, as the said petitioners have requested, to the dismemberment and erection, respectively, of a new parish. Wherefore, a careful examination of the matter having been made by our vicar general under express orders, and a process having been drawn up, after the rector of the aforesaid parish of N— was cited and heard, and the facts being conclusively sustained by the depositions of witnesses and other legitimate proofs, We, by virtue of our ordinary power and of that delegated by the council of Trent, c. 4, sess. 21 de reform. do hereby separate divide and dismember the said place N— with the church of Saint N— (now built or to be built), its people, inhabitants and families from the aforesaid parish church of N—; and, with the consent of our chapter (consultors) We erect and constitute the said church of Saint N— with its place and district extending from —— to —— (give exact limits on N. S. E. W.) into a parish church, giving and conceding to the inhabitants of the said place and district full and free power to have and to hold in the said parish, funerals, a cemetery, baptismal font, belfry and all other marks of a parish. And We hereby assign as a proper division of the property of the old parish of N— the sum of —— dollars to be paid within—— years by the said old parish of N— to the said new parish of N— in full for all claims and demands. This money, together with the subscriptions promised by the petitioners and recorded in our chancery, and all other alms, dues and offerings, certain and uncertain, usual to parish churches, We hereby tax and assign for the support of the pastor and the aforesaid new parish in accordance with the diocesan statutes. And We declare and decree that the said church of Saint N— is not subject to any *jus patronatus* whatever, but that it pertains to the free colla-

tion of ourselves and our successors in office, according to the form of the council of Trent. But that &c, as above in number 121, to the end."

123. When one parish church is to be united to another, for some just cause, such as poverty, the process must show the cause fully proved. The decree may be drawn as follows:

"N—, Bishop of N—. To all interested, peace in the Lord. That divine worship in parochial churches may be properly conducted throughout our diocese and that those having the care of souls in them may be sufficiently supported from the altar, We gladly accord our assistance. Therefore, since it has been brought to our attention by the Rev. N. N., the rector of the parochial church of Saint I in N— that in the same place (or near it) there is another parish church under the invocation of Saint 2 whose revenues on account of their smallness are not sufficient to support its pastor; and if the said parochial church of Saint 2 be united to the said parochial church of Saint I, which is situated in a better location, then a proper support can be obtained for the rector of this church of Saint I, and divine worship can be celebrated in a more becoming manner; moreover, since for these reasons he has asked Us to provide in accordance with the premises, and since We find all and singular his statements to be true, as is shown by a legitimate and diligent examination instituted by Us and the testimony of witnesses worthy of belief; therefore by our ordinary authority and that delegated by the Holy See through the sacred council of Trent sess. 21, c. 5. de reform. and by every other best way, with the consent also of our cathedral chapter (consultors) We by these presents do perpetually unite, annex and incorporate the aforesaid parochial church of Saint 2 with all its rights and appurtenances to and with the said parochial

church of Saint I for the better service of God and the greater good of souls; in such a way that whenever the present rector of Saint 2 shall die or resign or in any other way vacate the said church, and its provision and disposal thereby pertains to Us, then and in such case it shall be lawful for the then existing rector of the church of Saint I by his own authority to freely take actual, corporal and real possession of the said church of Saint 2 and of all its rights and property, and to convert the fruits and revenues thereof to his own use and that of the aforesaid churches and perpetually retain possession without any other permission whatever being obtained from any superior. But We desire that when the union shall have been effected, the aforesaid church of Saint 2 shall not be defrauded of its proper service and that the care of souls in it shall not be neglected, but that its burdens be supported. All and singular of which We make known to you by the above letters. In testimony whereof, &c. Given &c.

[L. S.] N. Bishop of N.

N. N. Chancellor."

"The above decree of the union of the church of Saint 2 with the church of Saint I was read, made and published also by affixing it to the doors of the aforesaid churches as is certified by the court messenger in the presence of N. N. and N. N., witnesses for the purpose.

N. N. Chancellor."

124. When a bishop establishes an irremovable rectorship the following form of decree may be used and published in the usual way, especially by affixing it to the church door:

"N.— Bishop of N.— to all whom it may concern, greeting; Since it is required by the Third Plenary Council of Baltimore that a number of parishes in each diocese, which have the proper qualifications,

be made irremovable rectorships, and since the parish of St. N.— in the city of N.— has been found by examination and the process instituted by our vicar general, to have a congruous church, presbytery and school for both sexes as well as an assurance of competent support for the parish and the aforesaid parish institutions; therefore We, having taken the advice of our diocesan consultors, do hereby make, constitute and declare the said church and parish of St. N.— in the city of N. an irremovable rectorship with all the rights and privileges by law accorded to the same, and We hereby define its territory to be as formerly with these limits. (Give exact limits on E. W. N. S.) Further; that the newly erected rectorship may be supplied with a competent rector, in accordance with the same council of Baltimore We hereby designate and appoint the Rev. N. N., whom We and our synodal examiners have found worthy and competent, to be its irremovable rector with all the rights and privileges by law granted to such rector; and We command all whom it concerns to recognize him as such irremovable rector and accord him all the rights and privileges consonant therewith. In testimony whereof &c. Given &c.

[L. S.] N. Bishop of N.
N. N. Chancellor."

125. When a parish has all the requirements for an irremovable rectorship an application may thus be made to the bishop asking that he declare it such by proper decree:

"Place and date.——Most Reverend Bishop: The undersigned priest of the diocese of —— respectfully lays before Your Lordship the following facts and petition. The parish of Saint— in the city of — has a congruous brick church, an appropriate rectory, and schools in which the children of the parish receive satisfactory education. The assured revenues

of the parish from pew rents, collections, &c., are ample for the support of the pastor and the aforesaid institutions.

The undersigned, the present rector of the parish, has been in honorable and faithful service in this diocese for —— (over ten) years, and has been in charge of a mission for —— years during which time he believes his administration of spiritual and temporal affairs was successful. Moreover he has received in regular course the degree of —— to which he points as proof of sufficient knowledge.

Therefore, your orator, while humbly showing that these are the requirements for an irremovable rectorship (III C. Balt. ch. 5) and that there are in the diocese of —— less than the required ten per cent. of the pastors made irremovable rectors, earnestly petitions that Your Lordship will forthwith institute the usual process and make a decree to the effect that the church of Saint — in — is an irremovable rectorship and that the undersigned, Rev. N. N. is its permanent rector, with the rights and privileges accorded by law. And your orator will ever pray. With great respect, I remain,

Your Lordship's obedient servant,

To Most Rev. N., Bishop of N. N. N."

The application will receive proper consideration and a reply. If the pastor finds himself aggrieved thereby he may make a recourse on the matter to the S. Congregation of the Propaganda.

126. When two irremovable rectors wish to exchange parishes, each without fraud, unconditionally resigns in favor of the other, and after the bishop accepts the resignations, as he may do in any month of the year, he issues without concursus and orders published within three months a decree for each like the following:

"N—, Bishop of N—, to our beloved N. N. health in the Lord. Accommodating ourselves to the just desires of petitioners We willingly grant what is not contrary to the sacred canons. Since, therefore, you this day through yourself have resigned freely, spontaneously and unconditionally into our hands the parish church of Saint N— in N— (or other benefice), and likewise our well beloved in the Lord, the Rev. N. N. by his procurator N. N. specially commissioned for this purpose, has resigned freely, spontaneously and unconditionally his parish of Saint N— in N— *ex causa permutationis* to be made sincerely between yourselves; We, inclining favorably to your wishes, having accepted the resignation for the aforesaid reason, do by our ordinary authority hereby confer and assign to you the aforesaid parish church thus made vacant, with all its rights and appurtenances; you having been examined and found competent by three of our synodal examiners. (The last clause is not necessary if he has been previously examined for another parish.) And We by the imposition of the biretum on your head, do hereby invest you with the said parish and We immit you into the actual, real or corporal possession thereof, you having made and We received your oath on the holy gospels, that no fraudulent pact or bargain has intervened, and that you will be faithful and obedient to Us and our successors in office and to holy church and that you will laudably serve the aforesaid church in spirituals and temporals, and support its burdens, and recognize our rights, and that you will maintain and defend to your best ability the rights and property and will not alienate anything of the said church, but will endeavor to recover any rights or property which may be alienated at any time. Wherefor by these presents We order all notaries and others whom it may concern to recognize you, (after you have made a profession of faith before our vicar general) as such parish priest and to assist you in tak-

ing possession of the said parish by our authority. In testimony whereof We have hereunto attached our signature and ordered our seal affixed, and the above decree to be expedited and published. Given &c.

[L. S.] N. Bishop of N.

N. N. Chancellor."

If the exchange of parishes should be fraudulent it would be null. Fraud is supposed when an exchange is made by a sick or very old person or when there is a great difference in the benefices exchanged. No exchange can be made by the mere act of the beneficiaries. It must be made with the consent of their superior; otherwise both lose their benefices. To prevent fraud the exchange must be published.

127. When an irremovable rector (or a movable one) wishes to resign his parish because of old age, or other reasonable cause, he must file his resignation in writing with the bishop, who within one month will either accept or reject it, and within the same time will fill the vacancy. (*Cf. Monacelli, T. 1, f. 19, t. 2, n. 5.*) Because of the special faculties given by the Holy See to bishops of the United States, this time for filling the vacancy may be extended twenty days. The person resigning his parish must be otherwise provided with support, and the bishop before accepting his resignation is obliged to be formally made certain of this fact. (*Cf. Bull of Pius V. Quanta Ecclesiœ n. 3.*) According to the III Council of Baltimore n. 38, VII, the rector may show a pension as his means of support. He may also show personal property. When old age or ill health is alleged as a reason, it is scarcely possible to give a general rule for judging it. Sixty years is

by common consent considered old age; but fifty years is also sufficient in law. Much depends on the view of the bishop. Among reasons for resignation, admitted in law, and mentioned in the Bull of Pius V, n. 58, are: Old age, ill health, crime, ecclesiastical censure, impossibility or unwillingness to serve the benefice, obtaining another benefice, entrance into a religious order, impossibility of residing in the parish because of the deadly enmity of the people against the pastor. It should be remarked that only the religious profession actually vacates the benefice: entering the novitiate is not sufficient. The same holds of a priest leaving a diocese for which he was ordained by the title of mission. He still belongs to the diocese until he is actually professed, and may if refused by the religious order, at any time return to his diocese and must be re-admitted and supported, even though he had agreed to leave forever. This matter has been frequently decided by the Holy See and the Apostolic Delegation, and deserves careful consideration. Not unfrequently priests are allowed by bishops to spend the best years of their life laboring outside their own diocese; but when ill health overtakes them they are thrown for support onto the diocese to which they belong by the title of mission. This emergency, it seems, should be forestalled.

128. The following form may be used for resigning:

"The Rev. N. personally appeared in the episcopal curia of N.— and said and exposed that he is weighed down by old age and for this and other reasonable causes it is difficult for him to attend to

the cure of souls and even impossible to fulfill his duties as pastor, and therefore he willingly, spontaneously, unconditionally, and without fraud or chicanery has resigned, renounced, and does resign and renounce into the hands of the Most Reverend Bishop N. N. the parish church of Saint N.— in N.— with all and singular its rights, appurtenances, honors and obligations; and because he has mèans whereby otherwise he can live and be properly supported (means should not be mentioned, but document showing such means should be filed) he asks that his resignation be received and accepted, asserting that in the present resignation there neither has been nor is any fraud, chicanery or taint of simony whatever.

Thus I renounce and resign and insist.

I, N. N., irremovable rector of the church of Saint N.— in N—.

All of which the Most Reverend N. N. Bishop of N. having seen and examined and it appearing by testimony and other proofs that the aforesaid statements are true, the said Most Reverend Bishop admitted and accepted the aforesaid resignation after having received an oath of the Rev. N. N. that in his resignation there has intervened no fraud, trickery or other illicit bargain or any taint of simony; and he ordered the resignation published. Witnesses present were N. N. and N. N.

N. N. Bishop's Chancellor."

The publication of the resignation may be made by prefixing it to the edict for concursus to fill the vacancy.

129. When a pension is to be assigned a rector that he may resign and have support, for safety it should be assigned in writing, and the document should be executed before he gives up possession of his office. The rector should demand this and to prevent misunderstanding a copy should be retained in

the chancery office. The consent of the Holy See is required for imposing a pension on parish churches. (*Cf. Benedict XIII, Sept. 5, 1724.*)

The bishops of Canada have this faculty in their form T.: "Assignandi pensiones parochis vel missionariis ex infirmitate resignantibus parœceas seu missiones in quas per decem annos incubuerunt, solvendas annuatim a successore, non excedentem tertiam partem fructuum quolibet modo provenientium ex parœceis vel missionibus." "Voluit autem Sanctitas sua ut episcopi in prædicta facultate exercenda expressam mentionem facere debeant Apostolicæ Delegationis, necnon epocham adjungere factæ sibi concessionis."

The following form may be used in assigning a pension:

"N—, Bishop of N—, to Rev. N. N. beloved in the Lord, greeting. Since those priests who long have labored in the vineyard of the Lord or have become exhausted and broken by serious illness or are otherwise incapacitated should nevertheless be properly supported, We are desirous of providing for such of our diocese who otherwise might not be able to live in a becoming manner and with the convenience suitable to their sacred office. Therefore, We willingly give ear to your relation that you have labored in the diocese for —— years with honor and satisfaction and that your health is now so unsatisfactory as to incapacitate you from further regular work and especially from the onerous duties of the pastorate. Finding on examination and by the testimony in the acts that the aforesaid relation is based on fact and truth, in order that you may have proper support after you have resigned your parish or mission, We hereby assign to you, after consultation with our diocesan consultors, the sum of ——dollars

per annum, payable quarterly, out of the Infirm Priests' Fund (or other source as the case may be) belonging to this diocese; (allowing you also the title of "rector emeritus" with its rank and privileges,) and We command the officials in charge of the said fund to recognize this your congruous pension and pay it at the proper time to you or to your order. In testimony whereof, &c. Given, &c.

[L. S.] N. Bishop of N.
N. N. Bishop's Chancellor."

If the pension is payable by the parish vacated then mention should be made of the amount and of the apostolic authority authorizing it, as stated in the preceding paragraph.

NOTE. It may be useful to quote substantially Rule 36 of the Apostolic Chancery which is applicable also in the United States and is intended to preclude by prescription controversy regarding possession of parishes and other benefices.

"Quicunque beneficium ecclesiasticum cum titulo saltem colorato bona fide per integrum triennium pacifice possidet, valide et licite in foro utroque illud retinere et a nemine amplius molestari potest, dummodo simoniace non obtinuerit."

CHAPTER III.

ORDER OF PRECEDENCE FOR CLERGY IN THE UNITED STATES.

130. To preclude confusion and dissatisfaction some order of precedence is as necessary in the church as it is in the state. The clergy of those countries wherein canon law fully obtains can easily know their exact position in church ceremonies and social gatherings, for numerous authoritative decisions have established precedents and made the law for nearly all contingencies.

In the United States, however, because of our peculiar circumstances, it cannot be denied that much confusion prevails as to the right of precedence. If a popular man is put into some ecclesiastical office his friends at once prefix a new title to his name, or at least give him the seat of honor in social gatherings. Not having made a special study of the matter, the new official soon assumes as a right what may have been accorded him as a personal favor. Others, noticing this, do the same. Thus, it happens, also, that the customs of other countries, never sanctioned by Rome, are introduced into the United States in spite of the fact that they have no applica-

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tion here and that they are contrary to the councils of Baltimore and the decisions of the Sacred Congregation of Rites.

One has but to examine the Catholic directories published from 1886 to the present time to gain precise information regarding these facts. First one diocese is shown to have adopted a certain designation for officials, and to have arranged its clergy in a certain order of precedence, and then in subsequent years other dioceses seem to have adopted this same order, no matter how erroneous it may be. Whether this was the act of the compilers or of diocesan officials matters little. The fact remains, and remains often without the ordinary of the diocese ever having decided the matter or been consulted regarding it. From the same source it is also apparent that great divergencies exist among the various dioceses of the country, making confusion indeed great.

131. The question of precedence is one not of pride but of right. If an ecclesiastical person is entitled to a certain position, he should, and in fact must, take it, otherwise confusion will ensue all along the line.

If he is not entitled to a certain position and assumes it, or is allowed to assume it, an abuse is introduced, against which it is the right and at times becomes the duty of any cleric to protest.

The Sacred Congregation of Bishops and Regulars has decided that "in order to do away with all contests and controversies in the matter of precedence, that must be observed which is observed in Rome, the mistress of all." (*Barbosa, Apostolic Decisions, under Precedence n. 18.*) And the same Sacred Congregation in regard to regulars of both sexes

decided that the rules of precedence must be observed "even though one should wish to give up his right." (*In Assisiensi, 30 Oct., 1600.*) What here is applied to regulars can be applied also to seculars, for the reason is the same—order must be preserved.

132. The practice of the Roman Court is therefore a safe guide for regulating precedence among the clergy of a diocese in the United States wherever that practice can be applied. On those points which are peculiar to this country the Third Council of Baltimore may safely be followed. There is no authority for introducing into the United States the peculiar titles, customs or laws of France, Belgium, England, Ireland or Germany. In fact, such customs are forbidden by the councils of Baltimore. It seems, however, that some such titles or customs have been unwittingly introduced. An example in point is giving a bishop the title "Right Reverend," brought over from England, when, according to the practice of the Roman Court, he should be entitled "The Most Reverend" the same as an archbishop. Another example is the abuse of giving deans or vicars forane the title "Very Reverend," which was brought over from Belgium and Ireland, but to which they are not entitled by the practice of the Roman Court and decisions of the Sacred Congregation of Rites, issued again recently.

133. If an order for precedence may be laid down without offense, the following may be considered in accordance with canon law, the Third Council of Baltimore and the practice of the Roman Court. In such a delicate matter it was deemed wise first to submit it to competent authority.

First—Preceding all his clergy is the Most Reverend Bishop or Archbishop of the diocese.

Second—First under him, and above all other priests of the diocese, is his vicar general.

Auxiliary and other bishops who may be in a diocese take precedence over the vicar general, except, of course, in a meeting over which the bishop has specially deputed his vicar general to preside, or unless the vicar general is himself a bishop. For there is a special order of precedence among bishops which must be observed throughout the world and must be satisfied before the order of precedence to be observed between bishops and priests can be considered.

Prelates of the Roman Court, living in a diocese, follow among themselves the rules of precedence laid down by the court, protonotaries apostolic ranking first, then domestic prelates, then honorary chamberlains of the Pope. The vicar general precedes all these in the diocese where he is vicar, but outside of his diocese all these prelates rank before him. If, for instance, the bishop of a diocese should attend a council or ceremony outside his own diocese, and take his vicar general and a prelate with him, on that occasion the prelate would rank ahead of the vicar general, for Roman prelates have rank all over the world, and the vicar general is out of the territory where he is prelate.

134. Third—After these prelates may be classed the consultors, and the irremovable rectors of the diocese ex æquo, precedence among them being regulated by the time of their ordination, since to some

few canonists there seem to be no benefices, strictly speaking, in the United States.

These two classes together propose the names for the choosing of a new bishop in case of a vacancy in the diocese, and thus take the place of the cathedral chapter under canon law in what may be called its most important act. The diocesan consultors also, in other matters, chiefly as counselors of the bishop, may be considered representing the cathedral chapter. While the Third Plenary Council of Baltimore, n. 30, lays down the fact, as acknowledged, that irremovable rectors precede other priests, "Pro gradu quo rectores inamovibilitatis titulo condecorati aliis præeunt sacerdotibus, etc.," still the same council gives the diocesan consultors no precedence. From this it follows that by law they can claim none, at least over irremovable rectors.

Further, the position of irremovable rector is permanent, while that of consultor is ad triennium, for three years. Again, the irremovable rectorship is the nearest approach to a benefice that we have in the United States; therefore, as precedence is regulated by the benefice one holds and by the time one acquired it, other things being equal, the presumption is in favor of the irremovable rector over the consultor. But because of their common office of proposing names for a new bishop, they may well be classed together ex æquo, and together be given precedence over the other clergy of the diocese.

Rev. Dr. Peries, former professor of canon law in the Catholic University of America, prefers separating the consultors and irremovable rectors into two bodies, giving preference to the consultors. He

says: "The council of Baltimore did not attribute them this place, but the Plenary Council was not exhaustive of all matters, and has left several untouched." It is precisely to harmonize what is the law and what was possibly overlooked, that, without depreciating either class, the consultors and irremovable rectors are grouped together ex æquo; but if, because of the possible number of irremovable rectors, a distinction is preferred, (this seems better) then these rectors among themselves rank according to the time they acquired their parishes, the rule being, "Prior in tempore, potior in jure"—First in time, first in right. (*Regulæ 54, jur. in 6°.*) For this reason, also, these rectors should be mentioned in that order in the directories immediately after the consultors. Then no confusion will ensue.

135. Fourth—After the consultors and irremovable rectors may be placed, the rector of the cathedral, the rector of the diocesan theological seminary and rural deans, ex æquo; precedence being regulated among them by the time of their ordination. (If any of this class are among those of n. 3 above, then, of course, they rank under n. 3.)

It seems proper that those mentioned in this n. 4 should have some precedence, not indeed over those mentioned in n. 3, i. e., not over consultors and irremovable rectors, but over the other clergy. For the rector of the cathedral, because of it being the bishop's church, and the rector of the seminary, because of that position, seem entitled to some special honor in ecclesiastical functions, though not in others, according to the Sacred Congregation of Rites, June 16, 1608.

Rural deans, according to at least sixteen decisions of the Sacred Congregation of Rites, given to different countries, and made of universal application, have no precedence over other priests, except only in those acts wherein they are the delegates of the bishop. "A vicar forane or dean, by reason of that office, has no precedence in choir, in sessions, in processions and in other acts and ecclesiastical functions over other parish priests, canons and priests older and more worthy than himself; but the vicar or dean must stand, sit and walk in the place of his reception and dignity just as if he were not a vicar forane or dean, both with the cotta and without it, notwithstanding any and every order of the bishop to the contrary, except only in those congregations or conferences which are held each month by order of the bishop, in which, as the delegate of the bishop, he should precede all; but not, however, in the procession, mass and other acts which take place before or follow the conference." And in another decree, intending to eliminate even the custom, the same Sacred Congregation ordered the observance of the above decree, "notwithstanding any and every custom to the contrary." (*Cf. Ferraris sub verbo, Vicarius Foraneus.*) Therefore Rev. Dr. Smith in his "Elements" No. 441 is in error.

Hence also Zittelli (*Apparatus Juris Canonici, p. 147,*) writing of our present time, says plainly: "Any custom to the contrary is an abuse." This author, it may be remarked, was the official of the Sacred Congregation of the Propaganda, and published his work in 1888 (after the council of Baltimore) especially for use in the United States and

countries similarly situated in reference to canon law. Craisson, in his Manuale, n. 634, lays down the same doctrine. Benedict XIV, in his work, De Synodo Diœcesana, lib. III, 10, 7, when he quotes Bonhomius, seems to have overlooked these decisions of the Sacred Congregation of Rites, which contradict and nullify the authority he quotes. He himself lays down no precedence in this matter.

Still, the Third Council of Baltimore, after suggesting that rural deans might be appointed with advantage to the bishop, and after suggesting what duties might be assigned them, says (n. 29) that ordinaries ought to give these vicars forane certain faculties, more or less extensive, and also a certain pre-eminence among rectors. It must be noted that deans are not made of obligation by the council, nor when appointed does the council itself give them any precedence. Hence, deans have no canonical or legal precedence, and the council herein does not militate against the decisions of the Sacred Congregation of Rites and the teaching of canonists. However, the council suggests that ordinaries who appoint deans should give them some pre-eminence or prominence among rectors. Bishops cannot give them precedence over irremovable rectors, for these rectors are given precedence by the law itself over other priests. Therefore, if the bishop wishes to give prominence among rectors to his deans he can give it them among movable rectors and other priests. For this reason deans are placed with the rector of the cathedral and the rector of the seminary under n. 4. From this, as well as from the practice of the Roman Court, it follows that deans are in nowise entitled

to be called "Very Reverend." To authorize such a title for them it would be necessary to call all consultors and irremovable rectors "Very Reverend," which is quite preposterous. This question was determined also for our own times by the S. C. Rit. 2 Sept. 1871, in Trifluvian. (Three Rivers, Canada) where it was decided, "a vicar forane has pre-eminence or precedence over other priests of the place only in those meetings at which he is present as the delegate of the bishop." (*Cf. Collect. Prop. p. 71, n. 176.*)

136. Fifth—Under the fifth head, unless they rank higher because of other positions, may be placed ex æquo the chancellor and the secretary of the bishop, if they are priests, the fiscal procurator, the professors of the theological seminary, the examiners of the clergy; though it must be remarked that the law itself, as was pointed out in previous chapters, gives none of these precedence over simple rectors or rectors ad nutum. None of these by any fiction of law may claim the title "Very Reverend." If, however, a distinction is made, then

Sixth—Following these officials come movable rectors.

Seventh—Then chaplains of public institutions.

Eighth—And lastly, assistants or coadjutors to the rectors of parishes.

There being strictly speaking no benefices in the United States, except the irremovable rectorships, the diocese itself must be considered the benefice in this respect. Hence precedence is reckoned from the time of ordination, but in the case of priests incardinated from another diocese it is reckoned from the

date of their admission into the diocese, not from the time of their ordination.

Ninth—The regular clergy always yield precedence to the secular clergy, so that assistant priests of the secular clergy precede all the regular clergy, even if the regulars have charge of parishes and are seniors in ordination. Such is the law.

CHAPTER IV.

THE SACRAMENTS—BAPTISM, CONFIRMATION, HOLY EUCHARIST.

137. The parish priest is obliged to administer the sacrament of baptism and to keep a record of each one baptized. Except in case of necessity this sacrament should be administered in the church. The form for recording it may be found in the Roman Ritual. The record should contain the full name of the child, the parents, sponsors, minister, together with the date of birth and of baptism. Each record must be signed. Great indeed is the importance of the record of baptism, especially for those about to receive holy orders.

138. The parish priest is also obliged to keep a record of all those confirmed in his parish. The bishop of the diocese is the ordinary minister of this sacrament; nor should any but diocesans be confirmed except by consent of the bishop to whose diocese they belong. (*Monacelli, t. 5, f. 5, n. 1.*) Custom, with the tacit consent of bishops, in the United States, seems a sufficient permission. It is the duty of the bishop to administer confirmation, and therefore he cannot exact anything by way of expenses for giving it. (*Cf. Barbosa de off. Ep. all. 30, n. 10; Monacelli, t. 10, f. 7, n. 1.*) He may give it on the occasion of his visitation of the parish, for which he

is entitled to his actual maintenance. But he may not tax this maintenance in money; he must accept it in victuals. (*Cf. S. Cong. Conc. in Larin. 12 April, 1698; Monacelli, t. 5, f. 2, n. 20-25.*) The III Council of Baltimore, n. 14, says that in diocesan synod provision should be made for the expenses of this visitation.

The record to be kept by the pastor should contain the full names of those confirmed, with the names of their parents and sponsors. An alphabetical list may be made of those confirmed, headed by the words: "On the —— day of —— A. D. —— the Most Reverend Bishop N. N. confirmed the following in the church of Saint N.— in N.—" At the bottom of this list the parish priest affixes his signature.

139. Only those baptised may be confirmed. The Roman Catechism says that confirmation should hardly be given to those younger than seven years, and that the usual age for the sacrament is the twelfth year. Those receiving it can then be instructed in the faith. If they have made their first communion, they should receive the Holy Eucharist, after confession, as a preparation for confirmation. If possible the candidates should be fasting.

Usually the bishop brings with him the chrism needed in confirmation. In the Latin church it is a mixture of olive oil and balsam, blessed by the bishop. The chrism of the Greeks is made of thirty-five aromatic herbs besides the oil and balsam.

140. The parish priest, however, is required to procure the holy oils needed for the sacraments and keep them in the church in a proper place under lock.

These oils may not be sent by express, because of the irreverence in such carriage, nor brought by a layman. (*Cf. Bened. XIV, Inst. 81, n. 5.*) They must be procured from the bishop of the diocese and renewed each year. (*Cf. Ritual, Rubric 32; Cavalieri on Rubrics, vol. 4, 26.*) Bishops are positively prohibited from making any charge whatever for the holy oils. (*Cf. Benedict XIV, De Syn. Diœcesana 5, 7, 10.*)

It may be well to cite a decree of the S. Congregation of Rites given Jan. 31, 1896: "Instante episcopo Anneciensi, ut permittatur usus s. oleorum anno præcedente benedictorum usque ad sabbatum ante Pentecosten exclusive, ne eo tempore absint a propriis paræceis rectores * * * S. R. C. juxta votum commissionis liturgicæ rescribendum censuit: parochus curet ut presbyter vel clericus, si possibile sit in sacris constitutus, nova olea recipiat. Quodsi aliquod adhuc exstet impedimentum idem parochus vel per se vel per alium sacerdotem benedicat fontem, sine sacrorum oleorum infusione, quæ privatim opportuno tempore fiet; nisi aliquem baptisare debet; tunc enim in ipsa benedictione solemni vetera olea infundat. Atque ita servari mandavit."

141. The Holy Eucharist is "the sacrament of the body and blood of Jesus Christ under the appearances of bread and wine." In the Eucharist Christ is truly, really and substantially present with body, soul and divinity. Christ is wholly present permanently under each species, and in every part—at least sensible—of each species. In the sacrament of the Eucharist there occurs a true transubstantiation, or a real conversion of the whole substance of

the bread into the body, and of the wine into the blood of Christ, so that after consecration, nothing but the appearances remain of the bread and wine. These points are of catholic faith.

142. Every parish priest, or vicar having the care of souls, is obliged in justice to administer the sacrament of the Eucharist to his subjects if properly disposed, not only during Easter time and at death, but whenever they reasonably request it. A priest when celebrating mass administers the Eucharist to himself. He may also from devotion, in the absence of another priest, give himself the Eucharist without saying mass. (*Cf. St. Alphonsus, n. 237; Lehmkuhl, n. 136.*) Ordinarily when a pastor allows a priest to celebrate mass at the altar of the Blessed Sacrament in his church, he is supposed also to grant permission to administer the Eucharist to the laity, who receive from devotion. This is not the case with Easter communion. Parishioners must by law receive their Pascal communion in their parish church and from their own pastor. (*S. Cong. Epp. et RR. 21 Jan. 1848.*)

143. By law only cathedral and parish churches and those of regulars who make solemn vows may retain the Sacred Eucharist. Others may obtain the privilege by apostolic indult. It is forbidden to keep the Blessed Sacrament in any other place than the tabernacle placed in the middle of the altar. (*Cf. S. Rit. Cong. Aug. 1863.*) This tabernacle should be regularly of wood, gilded outside and covered with silk inside. A corporal should be on the floor of it. The outside should be covered with a canopy of silk, wool or even cotton if the richer

materials cannot be obtained. The canopy should correspond to the color of the day, but if this is impossible then it should always be white. (*S. Rit. Cong. 21 July 1855.*)

The tabernacle must be locked and the key kept by the pastor of the parish. It must not be left unguarded either around the altar or in the sacristy, nor can it be kept by the sacristan whether a religious or a layman. (*S. Rit. Cong. 22 Feb. 1593.*)

144. Sometimes it is necessary to give a person a certificate that he has received communion. In such case it seems imprudent and dangerous to state whether or not the person first went to confession unless to certify that an excommunication was removed. The fact of confession is implied in the fact of communion. If his communion was sacrilegious, his confession could easily be the same. Hence mention should not be made of confession or absolution. The parish priest is not bound by such a certificate of another priest if he knows that the one presenting it is a public sinner at home or is excommunicated. Catholics who fulfill their obligations without shirking usually receive communion in their own parish. The following form seems sufficient:

"To all whom it may concern. I, parish priest of N—, hereby certify that N. N., personally known to me, received the Holy Eucharist in the church of St. N— in N— on the —— day of —— A. D. —. Signed N. N. Dated &c."

145. The Eucharist besides a sacrament is also a sacrifice, which is called the mass. It is the one sacrifice of the new law and consists essentially in

the transubstantiation of the bread and wine into the body of blood of Christ. St. Alphonsus teaches as more probable that the communion also pertains to the essence of the sacrifice. The mass is a sacrifice of adoration, thanksgiving, satisfaction for sin and its punishment, and impetration for benefits and necessities.

146. The sacrifice may be offered and applied for anyone, except those from whom it is forbidden by the church. Such are only excommunicated persons. (*Bened. XIV. Con. In Super. n. 27, 18 Mar. 1755.*) Hence it may be applied even for infidels, not only in general but also individually. However, a distinction should be made between masses for the dead and for the living, between private and public celebration. Private masses can be said for the conversion of non-catholics but no announcement of the name can be made, lest there be scandal or the people think such a priest is acting in the name of the church. (*S. Cong. Inquis. 19 Apr. 1837.*) Asked "whether it is lawful for priests to celebrate mass for the intention of Turks and other infidels and to receive from them an alms for the application of the mass" the same S. Congregation on July 21, 1865, replied, that it is lawful provided there is no scandal nor any evil, error or superstition in the offering. Solemn public masses are conceded only for living rulers in the state and then only for the welfare of the state. But no solemn mass can be offered for a deceased non-catholic ruler, even the highest in the state, for then it would be a public solemn service for a deceased person, not for the state. This is strictly forbidden, as Gregory XVI declared in 1842: "It

is forbidden by both the ancient and modern discipline of the church that men who die in the external, notorious profession of heresy should be honored by catholic rites." At most therefore a private mass with the above restrictions may be said for a deceased non-catholic without any public announcement whatever. Commemorative services for non-catholics are forbidden in catholic churches.

For a similar reason prayers may not be asked or said publicly in church for the repose of the soul of a non-catholic, though they may be offered privately. Public prayer for the dead is undoubtedly a "catholic rite."

147. It is lawful to receive a stipend or alms for the application of a mass which a priest is not obliged to say for another; but when this stipend is received there arises a strict obligation to apply the mass as requested. The amount of the stipend is usually determined by diocesan statutes. A priest who has received a larger stipend than usual cannot licitly or justly commit to another the celebration of the mass and retain part of the unusual stipend; unless it is morally certain that this excess in the stipend was given as *jus stolæ* or on account of the dignity or position of the pastor, as occurs in nuptial or funeral masses. (*S. Cong. Conc. 25 July, 1874.*) In such case the priest who says the mass may be given only the usual stipend in accordance with diocesan statutes for low and high masses. The pastor may retain the excess as *jus stolæ*. Likewise if the excess of the alms was given because of friendship, relationship, gratitude, which can easily be known, a priest may commit the celebration to

another, giving only the usual stipend. But it is strictly forbidden to collect masses, receiving a certain stipend, and then send them to other places to be said for a smaller stipend. Pius IX in *Apostolicæ Sedis* has attached excommunication to this unlawful practice.

148. Urban VIII on June 21, 1625, prohibited the rectors of churches, whether secular or regular, from accepting a perpetual foundation of masses without the written consent of the bishop or vicar general in the case of seculars, and of the general or provincial in the case of regulars. He further ordered that the money left or donated for this purpose should be immediately put into immovable productive property with express and individual mention of the obligation annexed to it. He further ordered that all alms boxes having the inscription "alms for masses" should be removed from churches, and the S. Cong. of the Council later declared by authority of the same pope that this order included also those boxes placed in the church on All Souls' day. However the S. Cong. of the Council on Jan. 27, 1877, did not condemn the practice of collecting from the faithful on All Souls' day a rich alms and celebrating therefor but the one high mass on that day. But the S. Congregation gave orders that the people should be properly instructed that only the one mass would be said for all the alms.

149. The general rule according to the present discipline of the church is that a priest may say only one mass a day, except on Christmas when three are allowed. But by faculty of the Holy See for canonical reasons bination is allowed, with previous per-

mission of the ordinary of the diocese. This faculty is given the priest because of necessity, which means not the poverty of the priest, but the spiritual needs of the people and the scarcity of priests. Hence, if a second priest can be had, bination is not allowed. Neither is it allowed for the convenience of those who wish to hear mass in private oratories, whether they be seculars or religious. Two cases are given by Benedict XIV in which he says bishops by law may grant the faculty of binating: First, to a priest who has charge of two parishes or of two congregations so distant that one cannot be present when the priest is celebrating for the other on a Sunday or holyday of obligation; second, when there is only one church, but the people cannot all attend the one mass. In these two cases the law itself gives the priest the right to say two masses, but always after the bishop has acknowledged the necessity. In fact, Benedict XIV, l. 6, de Synod. Diœc. says that a priest with two parishes is bound to binate. From this it follows that less necessity is required for using the extraordinary faculty to binate than the necessity for which the law allows it.

150. If a number of the faithful, unless the priest binates, would miss mass to which they are bound there is sufficient reason for his saying two masses. Twenty was decided a sufficient number in one case. (*S. Cong. Conc. 12 Jan. 1847.*) And again in the case of prisoners ten or fifteen was declared sufficient. This declaration can be extended also to those in hospitals or cloistered convents. The priest cannot accept a stipend for more than one mass in case of bination, nor for either if he, as pastor, is obliged

to apply one mass for his people. (*S. Cong. Prop. Oct. 15, 1863.*) But for special reasons Pius IX on the above date granted certain bishops the faculty to allow their missionary priests to accept stipends for both masses. However, the S. Cong. of the Council has given a recent reply that a priest who binates may apply the second mass for a deceased fellow priest for whom by the obligation of a pact or society he is bound to offer some masses. Further, because the law allows three masses on Christmas day, a priest may satisfy three obligations on that day.

151. By common law mass should be celebrated only in a church, which has been blessed or consecrated and is not polluted or interdicted. Bishops may allow mass also in public oratories (i. e., those which are free to all and have a door opening on the street,) and in all religious and pious places. A religious place is one devoted to works of mercy or piety, erected with the approval of ecclesiastical authority, such as a seminary or convent. A pious place is a charitable institution founded with or without ecclesiastical authority, such as an orphan asylum, hospital, house of refuge. Bishops cannot, without an indult of the Holy See, allow mass to be said in a private oratory, except possibly once or twice for a grave reason. By the extraordinary faculties received from the Holy See the bishops of the United States may communicate to their priests permission to say mass *sub dio et sub terra, in loco tamen decenti, si aliter celebrari non possit.*" But this does not include the establishment of a private oratory and granting the permanent privilege of celebrating

mass therein. No secular entertainments are allowed in a church-building which has been blessed.

152. The pastor of the parish gives permission to celebrate in his church, subject to the diocesan regulations concerning permission to be received from the bishop. Strangers to a diocese must always procure a "celebret" from the bishop, who may limit it as to time and impose conditions; but if they have letters he cannot keep them from saying mass simply because they are strangers.

The following form may be used in granting a celebret:

"N.— Bishop of N.— We grant permission to celebrate mass in the churches of this city and diocese, (excepting churches of monks and the chapels of convents) to the Rev. N. N.— a priest of the diocese of N.—, as shown by commendatory letters of his ordinary dated —— and exhibited in our chancery; this permission being given for —— months and on the following conditions: That on all Sundays and holidays he shall be present at the services in the church of the parish wherein he resides; that he shall observe the canonical regulations regarding 'cohabitatio cum mulieribus;' that he shall wear the Roman collar and clerical dress; that he shall submit a certificate of the pastor of the parish wherein he has resided, stating that these conditions have been fulfilled, before this permission will be renewed.

[L. S.] N. Bishop of N. (or V. G.)
N. N. Bishop's Chancellor."

These conditions may seem strange to some, but experience teaches that they are prudently attached. They may prevent scandal to the faithful and inconvenience and annoyance to pastors, especially in places where strange priests dwell for a con-

siderable time. The conditions may be omitted if the "celebret" is granted for only a short time. The bishop cannot compel, but only exhort rectors of churches to furnish necessaries for priests who wish to say mass in their churches. (*S. C. Conc. 15 Dec. 1703.*)

153. Permission to binate should be asked of the bishop and be obtained in writing even when the law allows it; the reasons should be stated in the application. Following are forms for asking and conceding permission:

"Place and date ——.

Most Reverend Bishop: In the parish of N.— in N.— of which I have charge, it is impossible for all the people to attend one mass, because the church is too small, (some must remain at home while others attend or other reason) so that unless I say a second mass at least twenty (give approximate number) will not be able to hear mass, as obliged, on Sundays and holy days. Wherefore I request the privilege of binating on such days of obligation for the people. With great respect I remain,

Yours obediently,

N. N."

To Most Reverend N. N., Bishop of N.—"

"N. Bishop of N.— To Rev. N. N., rector of N.— greeting: Since the common law, as stated by Benedict XIV, l. 6, de syn. diœc., authorizes a priest in charge of souls to celebrate two masses in case of necessity on the part of the people; and since it is shown that such necessity exists in N.— of which you have charge; therefore We hereby judge that such necessity exists and grant that you or the priest for the time being in charge of N.— may licitly celebrate two masses on all Sundays and holy

days of obligation, under the prescriptions laid down for such cases by the S. Congregation of the Propaganda and contained in nos. 100 to 106 of III Plenary Council of Baltimore. In testimony whereof &c. Dated &c.
N. Bishop of N.
N. N. Chancellor."

The bishop may also grant this permission by virtue of the extraordinary faculty received from the Holy See. In this case the necessity need not be so evident; he should then mention that permission to binate is granted by faculty of the Holy See, giving date thereof.

154. When a sum of money is paid to a church as a foundation for masses, if it is to be a perpetual contract the consent of the bishop is first required. When this has been given in writing the following document may be drawn:

"This indenture made this —— day of —— A. D. —— between the Rev. N. N. pastor of St. —— church in N— for and in the name of said church, of the first part; and N. N. the executor of N. N. (or as the case may be) of the second part; witnesseth: That the said party of the first part for and in consideration of the sum of —— dollars to him in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, does by these presents, with the written consent and approval of the Most Reverend N. N., the bishop of the diocese of N— to which the aforesaid parish belongs, agree and promise for himself and his successors in the office of pastor of the said church, that each year perpetually (or for —— years) on the — day of —, or as near thereafter as possible, he will celebrate or have celebrated a high mass of requiem for the repose of the soul of the said N. N (or as the case may be) without any further trouble of any kind

to the party of the second part or his heirs or assigns.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above mentioned. (Signature.) [L. S.]

Signed, sealed and delivered in the presence of N. N. and N. N. witnesses.

Diocese of ——. On this —— day of ——A. D. ——before me, an ecclesiastical notary, appeared the above Rev. N. N. to me personally known and declared the above to be his free act and deed.

N. N. Notary."

155. A table of the foundations of masses with which a church is burdened should be hung in the sacristy and a book kept especially for the purpose of recording these obligatory masses and noting the fulfillment of the obligation. The examination of this book is one of the points of episcopal visitation. In case the obligation of masses, on account of depreciation or loss of the investment, is to be reduced, proper application should be made through the bishop to the Holy See. (*Urban VIII*, *1625; Innocent XII*, *1694.*) The same should be done if an insufficient amount has been left by will for the obligation of masses specified in the will. Obligations of masses left to one church cannot be transferred to another without permission of the Holy See. (*S. C. Conc. Dec. 1, 1686.*)

Instead of this foundation of masses a person while alive may by setting aside some property, with the acceptance of the bishop, found a simple benefice to which is attached the obligation of saying certain masses for the founder. This form may then be used:

"N— Bishop of N—. Since N. N. because of great devotion towards Saint —— wishes to endow

and has endowed an altar in his honor in the church of Saint —— in N— with the annual interest or revenue of —— dollars to be derived from permanent property, viz ——as is fully set forth in an instrument of endowment dated —— and preserved in our chancery (with the reservation of the *jus patronatus* of presenting the chaplain whenever a vacancy occurs, by himself and his heirs) We, therefore agreeing to his desires, do by our ordinary power, and every other best way, manner and form permitted to Us by law, erect the said altar of Saint —— in the said church of Saint —— in N— into a perpetual ecclesiastical benefice, and We wish and declare it to be so erected, and We assign, appropriate and apply the aforesaid property of the said N. N. as and for an endowment of the said altar. Further We grant and reserve to the said N. N. and his heirs the *jus patronatus* of presenting the chaplain or chaplains as often as a vacancy may occur, who however are to be instituted and confirmed by Us and our episcopal successors, with the obligation on the chaplain, (who is to be presented within the required time) of celebrating or having celebrated —— masses in every week for the salvation of the soul of ——. Thus, saving our episcopal rights, We erect and reserve. In testimony whereof We have ordered these present letters and this decree of erection signed by Us to be expedited and to be registered and preserved in our chancery together with the aforesaid instrument of endowment. Given, &c. N. Bishop of N.
[L. S.] N. N. Bishop's Chancellor."

156. The above form may be used for erecting any other simple benefice by changing the details, such as leaving out the *jus patronatus*, but retaining the essential features. These are: That the erection of the benefice must be in a church at a certain altar under the invocation of some saint and that certain free and stable fruitful property be assigned as an

endowment. (*Monacelli t. 2, f. 1, n. 12.*) This property may be deeded to the church corporation or mortgaged to it or leased for 999 years or otherwise safe-guarded. A bishop may not refuse the establishment of such a benefice if left by will or offered when living. If he refuses, the higher authority on recourse will supply the consent. (*Cf. l. c. n 7-8.*) If money is left or given for the purpose it must be immediately invested in stable, productive property. (*S. C. Conc. June 21, 1625.*) If alienated with consent of the Holy See, the proceeds must be immediately re-invested with the same obligation affixed. (*Ibidem.*)

157. Great care should be taken in drawing wills which leave bequests for masses. The supreme courts in various states have rendered very divergent decisions on the question whether such bequests are valid and whether such a trust can be created. In New York the court of appeals in the Thomas Gunning case of 1888 decided that a trust created by the testator leaving the residue of his estate to Frederick Smyth and Henry Alcock "to be devoted to the purchase of masses for the soul of the testator, the souls of his relatives, and the souls of all other persons in purgatory" is not valid in law. The decision seemed based on the point that there was no defined beneficiary. (Holland vs. Alcock, 108 N. Y. reports 312.)*

The most important decision, however, was made by the supreme court of Illinois, in 1898, in the case

*See also Ruppel vs. Schlegel, 7 N. Y. Sup. 936; In re Howard's Estate, 25 id. 1111; Vandeveer vs. McKane, 25 Abbot's N. C. 105; McHugh will case in Wisconsin, 72 N. W. Reporter 631; Iowa, Moran vs. Moran, 73 N. W. Rep. 617; Schouler, Petitioner, 134 Mass. 426; Rhymer's Appeal, 93 Pa. St. 142; Seibert's Appeal, 18 W. N. Cas. 276.

of Hoeffer vs. Clogan. Andrew Clogan died and by will left $1,000 and some real estate to the "Holy Family church" in Chicago, the real estate to be sold by the church and the total sum to be expended in masses for the repose of his, the testator's, soul and the souls of his mother-in-law and brother-in-law. The Holy Family church is not incorporated and therefore no such entity is known in law. The bequest would therefore fail unless it could be sustained by the doctrine of charitable uses. It was so sustained, the court holding the bequest to be a gift to a charitable use under the law of England adopted in Illinois. "The mass," says the court, "is a repetition of the sacrifice on the cross, Christ offering himself again through the hands of the priest and asking pardon for sinners as he did on the cross. It is regarded as a benefit not only for the particular soul in whose behalf it may be said, but to all others who may participate in the ceremony or attend it. Hence it may be upheld as a public charity. Such is the doctrine of the courts of Massachusetts and Pennsylvania."

It may also be noted that the supreme court of Michigan by mandamus to the auditor general, Nov. 8, 1889, decided that a minister who officiated at the funeral of an unknown person, found dead and buried at the expense of the state, was entitled to a fee for his services. It had been allowed by the circuit court to the coroner, but the auditor general had refused payment. The court ordered payment and said a stranger is entitled to a decent burial, which means with also religious service. (Lechance vs. Aud. General, 77 Mich. 563.)

CHAPTER V.

SACRAMENT OF PENANCE.

158. The sacrament of penance was instituted by Christ, by way of judgment or trial, for remitting to a penitent confessing them, all his sins committed after baptism, which remission is granted through the absolution of the authorized priest. On the part of the penitent contrition and confession are required and also satisfaction, which last is necessary only for the integrity of the sacrament; on the part of the priest, who takes the place of Christ by his commission, absolution is required. Thus contrition, confession and absolution are the essence of the sacrament of penance. The matter and form of this sacrament, as well as the dispositions required in the penitent and the method of confessing, are treated in works on moral theology. This work is concerned chiefly with the approbation, jurisdiction and conduct of its minister in certain circumstances.

159. Every priest in ordination receives the inherent or essential power to forgive sins in the sacrament of penance; but the use of this power, except for the benefit of a dying person, is restricted by the church and depends on its jurisdiction or commission. Approbation is required from the ordinary of the place where confessions are heard. It is defined: "A judgment of the ordinary concerning the compe-

tency of a priest to hear confessions." Without it no priest, secular or regular, except in case of death, can validly or licitly hear confessions. An examination is not strictly necessary before a bishop can give approbation, for his judgment may be otherwise well founded. So necessary is this approbation by the ordinary that if he should unjustly refuse it, or withdraw or limit it, the priest, even if a religious, could not validly hear confessions. Such a withdrawal or limiting of approbation on the part of the bishop is valid, though for its licity there must be good cause.

160. Approbation is something distinct from jurisdiction; for to approve is to declare a priest worthy or competent to receive subjects on whom to exercise the power of the keys; but to confer jurisdiction is actually to assign subjects to such priest. Approbation may be given only after examination if the bishop judges it necessary; and he may call to a second examination confessors whom he has approved. Even parish priests, who in their appointment acquire ordinary jurisdiction in the internal forum over their parishioners, may be cited to an examination if a well founded suspicion should arise of their incompetence. However, unless such suspicion arise, the bishop who approved them for the appointment to the parish cannot re-examine them, although his successor may do so. (*Rec. Decis. Rotæ 257, 258, p. 2.*)

161. As to regulars, properly so called, who make solemn vows, their prelates have ordinary jurisdiction over the members of the order, and through them the other members acquire delegated jurisdiction. But in regard to the confessions of seculars,

these regulars receive jurisdiction from the Roman Pontiff; but for its valid exercise the approbation of the ordinary of the place is required.

From this approbation their power is determined as to place, time, persons and also cases. (*Const. Apost. Ministerii, Inn. XII; Ben. XIII idem; Gregory XIII Const. Cum in Sacra.*) The common practice at present is for bishops to grant regulars approval only for a limited time or while stationed in the diocese, so that if they should lose their domicile in the diocese and again return, they would be obliged to obtain a renewal of approbation.

162. It is noteworthy that, except in the case of exempt regulars, the common practice to-day is for bishops to give priests jurisdiction together with approbation. With us this jurisdiction extends over the diocese except it be specially limited. It is usually given for a limited time. But since parish priests have implicit approval and acquire ordinary jurisdiction for the confessions of their parishioners by their appointment to the parish, this jurisdiction is not withdrawn except by a legal suspension or removal from the parish. The so-called "revocation of faculties," whatever it means, cannot cover such a case. Moreover, using such an uncanonical term is at best a dangerous experiment, and experience has shown that it is hardly sustainable even in the case of movable rectors.

163. In the general faculty for hearing confessions is not included that for the confession of nuns. A special approbation is required for this. Regulars should not be confessors for nuns except where seculars cannot be had. (*Monacelli t. 1, t. 9, f. 3.*)

The ordinary confessor for nuns is approved for three years and should then be changed. With the consent of the Holy See a second term of three years may be allowed; which consent is usually given only if by secret vote two thirds of the nuns *capitulariter* agree in requesting a second term. For the third successive term the consent of all the nuns of the convent without exception is required. A secular extraordinary confessor must be deputed by the bishop (or approved on presentation by the prelate of a regular order to whom the nuns are subject), and at least two or three times a year all the nuns of the convent must confess to him or present themselves in the confessional even though not desiring to confess. The S. Cong. of Bishops and Regulars on Sept. 27, 1861, ordered this also for congregations of sisters who take only simple vows. On April 22, 1872, the same Sacred Congregation decided that, where in parishes, especially in the country, there are three or four sisters belonging to congregations or institutes which have only simple vows, but living in the parish in order to teach school and frequenting the parish church for mass and the sacraments, they can make their confession outside their own house to any confessor approved by the ordinary. While the extraordinary confessor is hearing confessions, the ordinary confessor is prohibited from hearing the confession of any one in the convent under punishment to be arbitrarily imposed by the prelate to whom the convent is subject. Likewise access to the convent is prohibited to the extraordinary confessor, after he has completed hearing confessions. While these two regulations apply particularly to

nuns who take solemn vows, the spirit of the law insists that neither ordinary nor extraordinary confessors should visit in convents. The contrary practice is a serious abuse, even if the sisters are teachers in the parish schools, and it should be eliminated as the occasion of scandal.

164. Jurisdictionis potestatem jure suo limitibus coercere possunt Pontifices Maximi in ecclesia universali, et in sua quisque diœcesi episcopi per casuum reservationem, qua invalida prorsus redditur absolutio extra mortis articulum. Reservationes factæ a Romano Pontifice sunt perpetuæ; factæ ab ordinario, nisi statutæ sint in synodo diœcesana, cessant resoluto jure reservantis. (*Cf. D'Annibale, part. III, p. 144.*) Extra mortis articulum, tantum possunt directe a reservatis absolvere ipse reservans, reservantis superior et ab alterutro delegatus. Ceterum, in mortis articulo nulla est reservatio atque ideo omnes sacerdotes quoslibet pœnitentes a quibusvis censuris atque peccatis absolvere possunt. Qui tamen a censuris *Romano Pontifici speciali modo reservatis* absolvit pœnitentem, eum moneat de obligatione, si convaluerit, se sistendi eidem summo Pontifici eidemque plane parendi; recidet enim in censuras easdem si præstare hæc renuat. Verumtamen hæc obligatio non afficit eos qui peccata reservata vel alias censuras habent quam quæ speciali modo R. Pontifici reservata sunt.

165. Nullus confessarius absolvere potest complicem suum, marem vel feminam, in peccato turpi; ita ut absolutio, si qua detur extra mortis articulum, et invalida sit et illicita. Qui autem absolvere præsumit, excommunicationem latæ sententiæ Papæ speciali

modo reservatam incurrit. In mortis articulo vel periculo et valide et licite absolvet complicem si non possit advocari alius sacerdos qui confessionem audiat; vel si potest quidem advocari, sed non absque scandalo. Si vero adsit sacerdos alter qui confessionem excipere queat etiamsi non sit approbatus, tunc sacerdos complex absolvet quidem valide, sed illicite incidetque in excommunicationem. Hanc censuram incurrit etiam qui simulat absolvisse. (*S. O. 20 maji, 1867.*)

166. Casus iste reservatus id peculiare habet, quod semper in posterum excipendus est etiam in amplissimis facultatibus quæ episcopis et missionariis conceduntur. Idem dicendum de peccato quo quis calumniose denunciavit sacerdotem aliquem de crimine sollicitationis. Ambo casus specialissimo modo Papæ reservati sunt. (*S. O. 27 June, 1866; 4 Apr. 1871.*) Per S. Congregationem de Propaganda Fide die 24 Jan. anno 1868, "Sanctitas sua singulis archiepiscopis, episcopis ac vicariis apostolicis Statuum Fœderatorum Americæ Septentrionalis facultatem benigne concessit, qua illorum quisque pro quindecem casibus in propria diœcesi vel vicariatu uti possint, sive per suum vicarium generalem, sive per idoneos confessarios, a se vel a dicto vicario ad hoc specialiter et cum expressa mentione Apostolicæ auctoritatis deputandos, absolvendi nimirum a censuris et pœnis ecclesiasticis sacerdotes, qui personæ complicis in peccato turpi confessiones excipere eamque absolvere ausi fuerint, et cum iisdem super irregularitate a violatione dictarum censurarum quomodocunque contracta misericorditer dispensandi; sub ea tamen lege, ut sic absoluti et dispensati infra duos menses,

vel aliud congruum tempus a dispensante decernendum, directe vel per medium proprii confessarii, suppressis nominibus, ad S. C. de P. Fide recurrere, eique explicare, quot personas complices in re turpi, et quoties a peccato complicitatis absolverint, et mandatis ejusdem S. C. desuper ferendis obedire teneantur; sub reincidentia in easdem censuras et pœnas, si contravenerint; injuncta singulis pro modo culparum congrua pœnitentia salutari, quodque ab audiendis personæ complicis confessionibus omnino abstineant, aliisque injunctis de jure injungendis." (*Cf. Conc. Plen. Balt. II, p. cxlviii.*) Si facultas hæc singulis episcopis petentibus pro determinato numero renovata fuerit, dies alterius concessionis inseri debet in sub-delegatione.

167. Formula heic datur litterarum quæ post impertitam absolutionem in casu superiori essent a confessario scribendæ (mutatis mutandis) ad Em<u>mum</u> Præfectum S. Cong. de Prop. Fide vel ad Sacram Pœnitentiariam.

"Eminentissime Princeps:

Ego infrascriptus sacerdos ex facultate Apostolica mihi a Rev<u>mo</u> Episcopo N. N. communicata, (qui die —— mensis —— A. D. —— a Sanctissimo DD. Papa —— facultatem obtinuit cum potestate subdelegandi,) absolvi Titium sacerdotem ab excommunicatione lata contra absolventes complicem in peccato turpi et cum eodem super irregularitate a violatione dictæ censuræ contracta dispensavi. Nunc vero juxta præscriptionem (ejusdem indulti et) decreti S. Cong. de Prop. Fide die 24 Jan. 1868, certiorem facio Eminentiam Vestram quod idem sacerdos Titius unum tantum (vel duos &c) complicem eumque semel (vel bis, ter &c) absolverat. Addam eundem Titium facti sincere pœnituisse, et paratum se ostendere

mandatis omnibus exequendis quæ Eminentia Vestra vellit ei injungere.

Purpuram deosculans summa qua par est reverentia et devotione permaneo.

Eminentiæ Vestræ
Submississmus
N. N. Ecclesiæ N."

Excellmus Delegatus Apostolicus idem quod episcopi idultum habet et confessarium subdelegare potest. Recursus ad episcopum sæpe omittendus est ne sigillum periclitetur. Ex respon. S. O. 23 Junii, 1886, necesse est "ut tali modo absoluti infra *mensem* a recepta absolutione per medium confessarii ad S. Penitentiariam recurrere teneantur."

168. De jure ecclesiæ communi omnes sacerdotes sollicitantes ad peccandum contra sextum decalogi præceptum cum relatione ad confessionem, denunciandi sunt vel ordinario vel Apostolicæ Sedi; et pœnitens sollicitatus absolvi nequit antequam denunciaverit, vel si statim non possit, saltem quam primum se denunciaturum pollicitus fuerit. Denunciatio excipi poterit etiam a vicario apostolico. (*S. O. die 20 Junii, 1883.*)

Quoad sollicitationem notandum est, quod ea debet esse facta a sacerdote tamquam a confessario; hinc vel in actu confessionis sive immediate ante sive immediate post, vel extra confessionem occasione vel prætextu vel simulatione confessionis. Notandum etiam, quod si nullo modo omnibus adhibitis hortationibus, pœnitens ad denunciandum induci queat, confessarius opus caritatis faciet si, suppresso ejus nomine, ad S. Pœnitentiariam casum deferat.

169. Haud facile adhibenda est fides mulieribus sacerdotes de sollicitatione accusantibus. Etenim

non semel visæ sunt mulierculæ, quæ ex invidia, odio, zelotypia, aliove fine perverso clericos prorsus innocentes atrociter calumniatæ sunt. Igitur pœnitenti sedulo aperiat confessarius si per calumniam sollicitationis, de qua agitur, sacerdotem accuset, irretiturum seipsum teterimo scelere ac tali, a quo nisi per Summum Pontificem, extra mortis articulum, non possit absolvi. Ista reservatio extenditur etiam ad mandantes, consulentes, suadentes vel quocumque modo procurantes falsam accusationem.

Pœnæ sollicitationis sunt gravissimæ, sed ferendæ sententiæ; nempe suspensio ab ordine, privatio beneficiorum, dignitatum et officiorum quorumcumque et perpetua inhabilitas ad illa; addenda est perpetua inhabilitas ad missæ celebrationem. Confessarius solicitans potest absolvi ab alio quocunque confessario.

ADDUNTUR NOVISSIMÆ INSTRUCTIONES DE RATIONE PROCEDENDI IN CAUSIS SOLLICITATIONIS.

I. Instructionis S. Romanæ et Universalis Inquisitionis circa observantiam Apostolicæ Constitutionis "Sacramentum Pœnitentiæ" no. 10 præcipitur ut *antequam contra denunciatum procedatur, perspectum exploratumque judici esse debeat, quod mulieres vel viri denunciantes sint boni nominis, neque ad accusandum vel inimicitia vel alio humano affectu adducti fuerint.*

II. Præceptum hujusmodi, uti omnia quæ ad hujus Supremi Tribunalis procedendi rationem spectant, strictissimi juris censendum est, ita ut, eo neglecto, ad ulteriora procedi nequeat.

III. Nec sufficit ut id utcumque, sed omnino

necesse est ut certa iudiciali forma iudici innotescat; quod propria dictione: "*diligentias circa denunciatum eiusque denunciantes peragere*" significari in foro S. Officii usus obtinuit.

IV. Iamvero cum non semper nec ab omnibus vel tantum post longum tempus, cum nempe testimoniorum receptio difficilis et quandoque impossibilis est, Supremum hoc Tribunal id servari perspexerit, hanc ad rem Instructionem, pro Rmorum Ordinariorum norma, edendam mandavit.

V. Ordinarius igitur toties quoties aliquam de infando sollicitationis crimine denunciationem acceperit, illico ad diligentias peragendas procedet. Ad quem finem vel per se vel per Sacerdotem a se specialiter delegatum advocabit (separatim scilicet et qua decet circumspectione) duos testes, quantum fieri poterit, ex cœtu ecclesiastico, utcumque vero omni exceptione maiores, qui bene noverint tum denunciatum tum omnes et singulos denunciantes, eosque sub sanctitate iuramenti de veritate dicenda et de secreto S. Officii servando, iudicialiter interrogabit, testimonium scripto referens, iuxta insequentem formulam; utriusque vero testimonii atque simul respectivæ denunciationis authenticum exemplum directe tutaque via ad hanc Supremam Congregationem quamprimum transmittet.

VI. Dictum est: "vel per se vel per Sacerdotem a se specialiter delegatum;" nihil enim prohibet quominus, rationabili ex causa, pio alicui docto ac prudenti Sacerdoti id muneris Ordinarius demandare valeat; *speciali* tamen ei in singulis casibus delegatione imperitita, eique antea delato iureiurando de

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munere fideliter obeundo et de secreto S. Officii servando.

VII. Quod si inveniri nequeant duo tantum testes qui noverint una simul denunciatum et omnes et singulos denunciantes, plures vocari debent. Tot nempe hoc in casu testes, ut supra vocandi erunt, quot oportebit ut duplex quoad denunciatum et unumquemque denunciantem habeatur testimonium.

VIII. Quoties autem iuramentum de secreto servando, et, pro diversis casibus, de veritate dicenda vel de munere fideliter obeundo deferendum sit, iuramentum ipsum semper et ab omnibus, etiam Sacerdotibus, *tactis Ss. Dei Evangeliis et non aliter*, præstandum erit. In Ordinarii vero potestate erit, siquidem pro rerum, locorum aut personarum adiunctis necessarium vel expediens iudicaverit, excommunicationem ipso facto incurrendam et Rom. Pont. speciali modo reservatam violatoribus comminari.

IX. Sequitur interrogationis formula:

Die---- mense--- anno-----.

Vocatus personaliter comparuit coram me infrascripto Episcopo--(*notetur nomen diœcesis. Delegatus autem dicat:* coram me infrascripto a r. p. d. Episcopo--ad hunc actum tantum specialiter delegato) sistente in---(*notetur locus ubi negotium geritur.*)

N. N. (*nomen, cognomen et qualitates testis conventi*) qui, delato ei iuramento veritatis dicendæ, quod præstitit tactis Ss. Dei Evangeliis, fuit per me

1. Interrogatus: Utrum noverit Sacerdotem N. N.? (*nomen, cognomen et qualitates denunciati.*)

Respondit:--(*exscribatur lingua qua utitur testis, eius responsio.*)

2. Interrogatus: Quænam sit hujusce Sacerdotis vitæ ratio, quinam mores, quænam penes populum existimatio?

Respondit: - - - -

3. Interrogatus: Utrum noverit viros vel, ut plurimum, mulieres NN. NN.? (*nomen, cognomen et qualitates uniuscuiusque denunciantis.*)

Respondit: - - - -

4. Interrogatus: Quænam sit uniuscuiusque eorum vitæ ratio, quinam mores, quænam penes populum existimatio?

Respondit: - - - -

5. Interrogatus: Utrum eos censeat fide dignos, vel contra mentiendi, calumniandi in judicio et etiam periurandi capaces eos existimet?

Respondit: - - - -

6. Interrogatus: Utrum sciat, num forte inter eos et præfatum Sacerdotem ulla unquam extiterit odii vel inimicitiarum causa?

Respondit: - - - -

Tunc, delato ei juramento de secreto S. Officii servando, quod præstitit ut supra, dimissus fuit, et antequam discederet, in confirmationem præmissorum se subscripsit.

Subscriptio autographa testis vel eius signum ✠ crucis.

Acta sunt hæc per me N. N. (*nomen, cognomen et qualitates Episcopi vel eius Delegati qui testimonium recepit.*)

Datum Romæ die 6 Augusti 1897.

L. M. *Card.* PAROCCHI.

170. Formula pro concedenda facultate confessiones audiendi:

"N— Dei &c Episcopus N—. Dilecto Nobis in Christo N. N. salutem in Domino. Cupientes Nos in quantum possumus saluberrimi sacramenti pœnitentiæ administrationem in nostra diœcesi, ea qua majori potest doctrinæ sufficientia ac morum integritate exerceri; cum te hisce dotibus ornatum non immerito censeamus, et per Nos ac nostros examinatores examinatum, satis capacem idoneumque repererimus; idcirco ad tantum administrandum sacramentum tenore præsentium te approbamus, omniumque pœnitentium in nostra diœcesi confessiones audiendi, eosque sacramentaliter absolvendi, præterquam a casibus Sanctæ Sedi ac Nobis reservatis, (excepto mortis articulo) opportunam et ad — annos (vel alias) duraturam concedimus facultatem; excipimus tamen sanctimoniales. Præcipimus quoque, ut absque parochorum licentia aliorumve superiorum, in quorum ecclesiis volueris confessiones excipere, id efficere non debeas. Tibique insuper injungimus ut quotiescunque ægrotantium confessiones audieris, quamprimum ea de re eorum parochum certiorem reddas sub pœna privationis facultatis hoc administrandi sacramentum ipso facto incurrenda; sub eademque pœna mulierum non infirmarum confessiones audire extra sedem confessionalem et non interposita crate tibi omnino vetamus. Denique te in Domino enixe hortamur ut ea qua decet modestia ac puritate conscientiæ ad tale sacramentum ministrandum accedas et ea quæ per sacros canones et constitutiones SS. Pontificum atque per nostras constitutiones synodales, praesertim circa casus reservatos, vel per Sacræ Pœnitentiariæ de Urbe litteras ordinata et commissa sunt et erunt attente legas, perpendas et fideliter exequaris. In quorum &c. Datum &c.

[L. S.] N. Episcopus N.

N. N. Cancell. Episcopalis."

171. Formula litterarum testimonialium idoneita-

tis ad confessiones audiendas pro regularibus exemptis:

"Ego infrascriptus Ordinis N— magister, sacræ theologiæ professor ac prior (provincialis) provinciæ N— (mutatis mutandis) elegi Patrem N. sacerdotem in nostra religione professum ad audiendas confessiones sacramentales, quem sic electum tanquam sufficientem, idoneum, vita probatum, discretum, modestum atque peritum, et ab examinatoribus ordinis ad id approbatum, præsento Illmo et Revmo D. Episcopo N. quem humiliter peto ut ad tam salubre ministerium et officium exequendum illum et ipse approbare dignetur; ad hoc ut in sua civitate et diœcesi confessiones subditorum confiteri sibi volentium audire, atque eisdem pœnitentias salutares imponere et absolutionis beneficium impendere libere valeat. In quorum omnium testimonium præsentes dabam. Locus et dies &c.

[L. S.] N. N. Provincialis.
N. N. Secretarius."

172. Formula approbationis confessarii regularis exempti:

"N. Episcopus N. Dilecto Nobis in Christo P. N. ordinis N— presbytero salutem et benedictionem: Cum multa Christi messis Nos cogat undequaque ut ad auxilium nostrum operarios advocemus, teque pium et doctum examine noverimus aptumque ut sub nostri regiminis magisterio procurandæ fidelium saluti inservias; administrando pœnitentiæ sacramento te admovere statuimus, prout per præsentes ad sex menses (vel alias) tantum valituras ad confessiones Christi fidelium excipiendas in hac nostra diœcesi approbamus; ea tamen conditione ut a casibus Nobis et sanctae Sedi reservatis non absolvas. In quorum &c. Datum &c.

[L. S.] N. Episcopus N.
N. N. Cancellarius Episcopalis."

173. Formula deputationis confessarii ordinarii pro monialibus:

"N— Episcopus N—. Dilecto in Christo Rev. N. N. presbytero sæculari, salutem et benedictionem: Tibi, Reverende Domine, per examinatores nostros idoneo reperto et per Nos approbato ut in ecclesia et monasterio Santæ N— confessiones sacramentales monialium audire, et sæcularium etiam mulierum, si quæ in eodem monasterio erunt, easque absolvere valeas, præterquam a casibus et censuris Sedi Apostolicæ et Nobis reservatis, licentiam et facultatem concedimus et impartimur; tibique confessario ordinario a Nobis deputato omnes moniales confiteri teneantur. In clausuram monasterii non ingredieris, nisi, superpelliceo et stola indutus ut tantummodo sacramenta pœnitentiæ, eucharistiæ et extremæ unctionis infirmis administres, in quibus utique casibus semper hoc tuo munere modestia perfungas, sociatus a duabus ex senioribus monialibus, quæ cum confessiones infirmarum audies, janua cellæ aperta, te etiam videre possint, non autem audire. Negotiis monasterii aut monialium quibuscunque non te immisceas, neque ad crates seu rotas colloquaris nisi de his tantum, quæ ecclesiæ cultum et divinorum officiorum celebrationem respiciunt. Te quoque in Domino monemus, ut cures promovere quæ ad regulæ observantiam conducant; pravos autem abusus si qui sint, evellere, sed religiosam vitam fovere et enutrire coneris. Cum vero confessor extraordinarius per Nos mittitur, longe a monasterio abscedas, donec ille discesserit. Præsentibus cum solita mercede (a monasterio solvenda) ad triennium valituris. In quorum &c. Datum &c.

[L. S.] N. Episcopus N.
N. N. Cancellarius Episcopalis."

175. Formula deputationis confessarii extraordinarii pro monialibus:

"N.— Episcopus N.— Dilecto in Christo N. N. presbytero sæculari, salutem et benedictionem: Tibi, Reverende Domine, confessario in hac nostra diœcesi approbato, cujus vitam, doctrinam et morum probitatem jampridem experti sumus, obtemperantes S. Concilii Trid. decreto, necnon et S. Congregationis Epp. et RR. instructioni circa confessarium extraordinarium pluries in anno monialibus Nobis subjectis providendum, ut tanquam talis confessarius sanctimonialium monasterii N. in civitate N. sacramentales confessiones excipere et a peccatis absolvere possis, et eædem pœnitentiæ medicina indigentes liberius malis suis mederi valeant, etiam cum facultate ab omnibus casibus et censuris Nobis reservatis absolvendi licentiam concedimus et facultatem opportunam impartimur, per trinos dies unoquoque circiter anni tempore et quater tantum duraturam. In quorum &c. Datum &c. N. Episcopus N.
[L. S.] N. N. Cancellarius Episcopalis."

175. At times it is necessary for confessors to apply to the Sacred Penitentiary in Rome for faculties and dispensations for the internal forum or for occult cases. Even though bishops have the required faculties it is frequently imprudent or dangerous to apply to them. Besides the faculties in Form 1, and the extraordinary faculties of Forms C, D, and E, which are for use in the external forum, the Holy See through the Cardinal Penitentiary grants some bishops on application extensive faculties for the forum internum. A copy of this form is given below in paragraph 184.

When, however, it is necessary for the confessor to apply to the Cardinal Penitentiary, he should first make diligent inquiry into the case to determine just what faculty is required. He will then write either

in Latin or in the national language an exact and concise statement of the case without mentioning names, even though there be no danger in divulging them. In place of the real names he will therefore use N. N. or fictitious ones, and at the bottom of the letter will give the address to which the reply is to be sent. The envelope enclosing the letter is to be addressed: "To His Eminence, the Cardinal Penitentiary, Rome, Italy." The letter may be sent by ordinary mail.

176. The following form may be used in addressing the Cardinal Penitentiary, making the necessary changes as the various cases require:

"Eminentissime Princeps:

N. N. Sacerdos contraxit irregularitatem ex homicidio occulto ab eo ob (talem) causam, clam (tali) modo patrato (vel procurato) in personam hominis laici (vel clerici). Ab eo tempore non abstinuit ab exercitio ordinum, vitandi scandali causa (vel ne se proderet). Igitur humiliter supplicat pro remedio.

Vel: N. N. contraxit matrimonium cum muliere cujus matrem antea carnaliter cognoverat, conscius (vel nescius) impedimenti, quod occultum est; quare cum absque scandalo separari non possint humillime supplicat pro remedio.

Summa qua par est reverentia et devotione purpuram deosculans, permaneo,

Eminentiae Vestrae
Submississimus
———."

Then add the address to which the reply is to be sent. With proper changes application may be made to the bishop if he has the required faculty or to the Apostolic Delegate.

177. The reply of the Cardinal Penitentiary is

mailed to the address given, and in a second envelope encloses the necessary faculty or dispensation which is to be executed according to the directions given therein. Formerly the execution was committed only to a master of theology or doctor of law, but now it is frequently delegated to "any confessor approved by the ordinary." The letter of the Sacred Penitentiary at times contains various clauses whose meaning should be understood.

Quatenus si ita est, means that the confessor must inquire whether the statements are in fact true; but for this he need only depend on the word of the penitent. *Absolvas vel dispenses in foro conscientiæ*, means that the absolution or dispensation is of no value in the public or external forum. *In ipso actu sacramentalis confessionis tantum*, requires for the validity of the dispensation an actual confession. *An præmissa sive exposita sint occulta*, which is added especially when matrimonial dispensations are granted. If this clause is inserted and the crime, irregularity or impediment is not occult but public, then the faculty cannot be used validly; but another must be obtained *pro foro externo*.

When the faculty is given for deferring entry into a religious order, the letter contains the clause *consideratis quæ sunt consideranda*, which means that the confessor must examine whether the reason given is true and the necessity for delay real, and that he must also consider the danger for the penitent if delay is granted. When executing such a letter granting delay the confessor after granting sacramental absolution will say: "Insuper auctoritate apostolica specialiter mihi delegata tibi dela-

tionem adimplendi votum religionis quod emisisti concedo. In nomine Patris et Filii et Spiritus Sancti."

When executing a letter absolving from transgression of a simple vow of religion or of chastity in the case of a person who afterwards married, the confessor will say:

"Deinde auctoritate apostolica mihi specialiter delegata, te, non obstante voto castitatis quod emisisti et transgressus fuisti, in dicto matrimonio remanere et debitum conjugale reddere posse et debere declaro, et ut idem debitum etiam exigere licite valeas tecum eadem auctoritate apostolica dispenso. In nomine &c."

178. In executing letters granting dispensation from the secret impediment of affinity *ex copula illicita*, the clause occurs: *Sublata occasione peccandi cum dictæ mulieris* (*matre*, *patre*) and means that if the occasion is voluntary, it must be removed before the dispensation can be applied. *Injuncta ei gravi pœnitentia salutari, injunctis quæ de jure fuerint injungenda*, are requirements which confessors understand. The clause *Ita quod hujusmodi absolutio et dispensatio in foro judiciali nullatenus suffragentur*, means that if the occult impediment from which dispensation is granted should become public, then this dispensation will not avail in a trial, but a new one must be obtained for the external forum. In declaring the dispensation the confessor after the usual absolution from censures and sins will say with necessary changes:

"Insuper auctoritate apostolica mihi specialiter delegata dispenso tecum super impedimento primi

(secundi) gradus ex copula illicita a te habita cum sorore mulieris (fratre viri) cum qua (quo) contrahere intendis (vel attentasti) proveniente, ut præfato impedimento non obstante matrimonium cum dicta persona publice contrahere (vel in eo remanere) licite possis et valeas; item eadem auctoritate prolem quam ex matrimonio susceperis legitimam fore pronuncio et declaro. In nomine &c."

179. In letters for absolution in occult cases of a person who has imposed violent hands on a cleric, a clause is inserted, *Cum autem lator de præmissis quæ occulta sunt seu quæ ad forum ordinarii minime pervenerunt, plurimum doleat*, which requires that the confessor be certain of the sorrow of the penitent and of the secrecy of the case; otherwise the absolution is null. Another clause is, *Ita quod si præmissa ad forum ordinarii devenire contigerint et lator sententiæ seu ordinationi ordinarii parere contempserit in dictam excommunicationem eo ipso relabatur*, which means that if the crime becomes public and he refuses the penance imposed by the bishop he will relapse into excommunication. The form for absolution is:

"Dominus noster Jesus Christus te absolvat et ego auctoritate ipsius, et auctoritate apostolica mihi specialiter delegata, absolvo te in primis ab excommunicationis sententia quam incurristi ob manus violentas injectas in clericum N. N. et ab omni alio vinculo excommunicationis et interdicti in quantum possum et tu indiges. Deinde ego te absolvo a peccatis tuis. In nomine, &c."

180. The form for absolving and dispensing from irregularity incurred in case of occult homicide is:

"Dominus noster Jesus Christus te absolvat, et

ego auctoritate ipsius et auctoritate apostolica mihi specialiter delegata absolvo te in primis a quibusvis sententiis, censuris et pœnis ecclesiasticis; quibus propter ea quæ confessus es, quomodolibet innodatus existis, et pariter eadem auctoritate absolvo te a peccatis tuis. In nomine &c. Insuper eadem auctoritate apostolica tecum dispenso super irregularitate, quam ex homicidio contraxisti ut illa non obstante clericali charactere insigniri ac ordines etiam sacros et presbyteratus suscipere et postquam susceperis in illis etiam in altaris ministerio ministrare licite possis et valeas. In nomine, &c." (Si dispensandus esset sacerdos, dicatur,) "ut illa non obstante in sacris ordinibus etiam in altaris ministerio ministrare licite possis et valeas. In nomine &c."

181. The form for rehabilitating a simonical cleric is:

"Dominus noster Jesus Christus te absolvat et ego auctoritate apostolica mihi specialiter delegata, absolvo te inprimis a quibusvis sententiis, censuris et pœnis ecclesiasticis quas propter simoniam incurristi, et eadem auctoritate absolvo te a peccatis tuis. In nomine &c. Et insuper eadem auctoritate apostolica tecum dispenso in irregularitate quam ex simonia et ex violatione postea contraxisti, ut illa non obstante in tuis ordinibus etiam in altaris ministerio ministrare ac beneficia si quæ tibi alias canonice conferantur, non tamen beneficium quod simoniace obtinuisti et dimisisti, recipere et retinere licite possis et valeas. In nomine Patris et Filii et Spiritus Sancti. Amen."

182. When a priest gives absolution by delegation from the S. Penitentiary or from the bishop in a public case then the form will be the following after reciting the prayers prescribed in the Roman Ritual:

"Et ego auctoritate mihi commissa absolvo te a

vinculo excommunicationis majoris quam incurristi ob——, et restituo te unitati S. Matris Ecclesiæ, sanctis sacramentis et communioni fidelium. In nomine &c.

The confessor will in such case give the penitent, and also send to the bishop a certificate testifying to absolution from the censure.

"Ego N. N. confessarius deputatus ab Ill$^{\underline{mo}}$ et Rev$^{\underline{mo}}$ N. Episcopo N. (vigore litterarum Sacræ Pœnitentiariæ) fidem facio qualiter audivi confessionem sacramentalem N. N. et illi absolutionem sacramentalem impertitus sum in forma ecclesiæ consueta, non solum a peccatis, verum etiam ab excommunicatione quam ipse N. N. incurrit propter ——. In quorum fidem testimoniales has litteras dedi ex loco N. die — mense — anno.

[L. S.] Ego N. N. Confessarius Deputatus."

183. It is customary for the tribunal of the Penitentiary to use many peculiar abbreviations in its replies which are always sent in Latin. That such abbreviations may not be misunderstood, and necessary conditions thereby be omitted, an explanation of the most frequent ones is inserted:

archiepus	archbishop
alr	otherwise
als	otherwise
absoluo	absolution
aplica	apostolic
autte	authority
appbatis	approved
cardlis	cardinal
canice	canonically
cen	censures
Xtus	Christ
confeone	confession
coione	communion
consciæ	conscience
discreoni	discretion
dnus	lord
ecclæ	church
effus	effect
exit	exists
ecclis	ecclesiastics
epus	bishop
excæ	excommunication
fr	brother
frum	brother
gnali	general
humoi	of this kind

humilr	humbly
infraptum	undersigned
irregulte	irregularity
igr	therefore
lia	license
ltima	legitimate
lræ	letters
lite	licitly
mrimonium	matrimony
magro	master
mitaone	mercy
mir	mercy
nultus	not at all
ordio	ordinary
ordinaoni	ordination
Pp	pope
pr	father
pontus	pontificate
ptus	aforesaid
ptur	is preferred
pntium	present
pbter	priest
poenia	penance
poenaria	penitentiary
poe	can
pror	procurator
qtnus	in as far as
qmlbt	in some way
qd	which or what
relari	regular
relione	religion
Roma	Roman
sntæ or stæ	holy
saluri	salutary
sentia	sentence
spealtr	specially
supplibus	supplications
spualibus	spiritual
tn	nevertheless
tm	only
thia or theolia	theology
tli	title
venebli	venerable
vræ	your

184. The quinquennial faculties granted by the Cardinal Penitentiary to some bishops and, mutatis mutandis, also to some priests are the following:

RAPHAEL,

Divina Miseratione Episcopus Ostiensis et Veliternus, S. R. E. Cardinalis Monaco La Valetta, Sacri Collegii Decanus, Sacrosanctae Patriarchalis Archibasilicae Lateranensis Archipresbyter, SS. DD. Nostri Papae et S. Sedis Apostolicae Major Poenitentiarius.

Vobis Venerabili in Christo Patri N— N— , Episcopo N— , infrascriptas communicamus facultates ad quinquennium duraturas, quibus, non obstante Constitutione *Apostolicae Sedis* pro foro conscientiae per vos sive per Vestrum Vicarium in spiritualibus generalem, dummodo in Sacro presbyteratus ordine sit constitutus, etiam extra sacramentalem confessionem pro grege Vobis commisso, et intra fines Vestrae dioecesis tantum atque de speciali in

unoquoque casu exprimenda Sedis Apostolicae auctoritate Vobis delegata, uti valeatis; quasque canonico poenitentiario, necnon vicariis foraneis pro foro pariter conscientiae ac in actu sacramentalis confessionis dumtaxat, etiam habitualiter, si Vobis placuerit, aliis vero confessariis, cum ad Vos sive ad praedictum Vicarium generalem in casibus particularibus poenitentium recursum habuerint, pro exposito casu impertiri possitis, nisi ob peculiares causas aliquibus confessariis a Vobis specialiter subdelegandis, per tempus arbitrio Vestro statuendum, illas communicare judicabitis.

I. Absolvendi ab excommunicatione Romano Pontifici simpliciter reservata ob manus violentas injectas sive in clericos sive in Regulares, dummodo non fuerit secuta mors, vel mutilatio, seu lethale vulnus, aut ossium fractio; et dummodo casus ad forum Ordinarii deducti non fuerint; injunctis de jure injungendis, et praesertim ut parti laesae competenter satisfiat.

II. Absolvendi a censuris contra duellantes statutis, in casibus dumtaxat ad forum Ordinarii non deductis; injuncta gravi poenitentia salutari; et aliis injunctis, quae fuerint de jure injungenda.

III. Absolvendi quoscumque poenitentes (exceptis haereticis publicis, sive publice dogmatizantibus), a quibusvis sententiis, censuris, et poenis ecclesiasticis incursis ob haereses tam nemine audiente, vel advertente, quam coram aliis externatas; ob infidelitatem, et catholicae fidei abjurationem private admissas, sortilegia ac maleficia haereticalia etiam cum sociis patrata, necnon ob daemonis invocationem cum pacto donandi animam, eique praestitam idolatriam, ac superstitiones haereticales exercitas, ac demum ob quaecumque insinuata falsa dogmata incursis, postquam tamen poenitens complices, si quos habeat, prout de jure, denunciaverit; et quatenus ob justas causas nequeat ante absolutionem denunciare, facta a poenitente seria promissione denunciationem peragendi cum primum, et meliori modo, quo fieri poterit; et postquam in singulis casibus coram Absolvente haereses secrete abjuraverit, et pactum cum maledicto daemone initum expresse revocaverit, tradita eidem Absolventi syngrapha forsan exarata, aliisque mediis superstitiosis, ad omnia comburenda, seu destruenda; injuncta pro modo excessuum gravi poenitentia salutari cum frequentia sacramentorum et obligatione se retractandi apud personas coram quibus haereses manifestavit, et reparandi illata scandala.

IV. Absolvendi a censuris incursis ob violationem clausurae Regularium utriusque sexus, dummodo non fuerit commissa cum intentione ad malum finem, etiam effectu non secuto, nec casus

fuerint ad forum Ordinarii deducti, cum congrua poenitentia salutari. Et insuper absolvendi mulieres tantum a censuris, et poenis ecclesiasticis, ob violationem ad malum finem clausurae virorum religiosorum incursis, dummodo tamen casus occulti remaneant; injuncta gravi poenitentia salutari, cum prohibitione accedendi ad Ecclesiam aut Conventum, seu coenobium dictorum religiosorum durante occasione peccandi.

V. Absolvendi a censuris ob retentionem et lectionem librorum prohibitorum incursis, injuncta congrua poenitentia salutari, necnon firma obligatione tradendi prout de jure, sive per se, sive per alium absque ulla mora, et quantum fieri poterit ante absolutionem, libros prohibitos, quos poenitens in sua potestate retineat.

VI. Absolvendi a casu Apostolicae Sedi reservato ob accepta munera a regularibus utriusque sexus, injuncta poenitentia salutari et quando agitur de muneribus quae valorem decem scutatorum non excedunt, imposita aliqua eleemosyna Absolventis judicio taxanda, et caute eroganda, cum primum poterit, in beneficium religionis aut conventus cui facienda esset restitutio; dummodo tamen non constet, quod illa fuerint de bonis propriis Religionis; quatenus vero accepta munera, vel fuerint ultra valorem scutatorum decem, vel constet fuisse de bonis propriis Religionis, facta prius restitutione, quam si de praesenti poenitens adimplere nequeat, emissa seria promissione restituendi infra terminum Absolventis arbitrio praefiniendum; alias sub reincidentia.

VII. Absolvendi a censuris, et poenis ecclesiasticis eos, qui sectis vetitis massonicis, aut carbonariis, aut aliis ejusdem generis sectis nomen dederunt, aut qualemcumque favorem praestiterunt, ita tamen ut a respectiva secta omnino se separent, eamque abjurent, libros, manuscripta, ac signa sectam respicientia, si quae retineant, in manus Absolventis tradant ad Ordinarium quam primum caute transmittenda, aut saltem, si justae gravesque causae id postulent, comburenda, injuncta pro modo culparum gravi poenitentia salutari, cum frequentia sacramentalis confessionis, aliisque injunctis de jure injungendis; necnon absolvendi eos, qui ejusmodi sectarum duces et coryphaeos occultos denunciare culpabiliter neglexerint, injuncta pariter salutari poenitentia, et firma obligatione sub reincidentia eosdem Vobis vel aliis, ad quos spectat, prout de jure denuntiandi.

VIII. Absolvendi Religiosos cujuscumque Ordinis (etiam moniales, per confessarios tamen pro ipsis a Vobis approbatos, vel specialiter deputandos) non solum a praemissis, sed etiam a casibus et censuris in sua Religione reservatis, dummodo Religiosi

apud Confessarium subdelegatum legitimam habuerint licentiam peragendi confessionem sacramentalem.

IX. Dispensandi ad petendum debitum conjugale cum transgressore voti castitatis privatim emissi, qui matrimonium cum dicto voto contraxerit, hujusmodi penitentem monendo, ipsum ad idem votum servandum teneri tam extra licitum matrimonii usum, quam si marito, vel uxori respective supervixerit.

X. Dispensandi cum incestuoso, vel incestuosa, ad petendum debitum conjugale, cujus jus amisit ex superveniente occulta affinitate per copulam carnalem habitam cum consanguinea, vel consanguineo sive in primo sive in primo et secundo, sive in secundo gradu suae uxoris, seu respective mariti, remota occasione peccandi, et injuncta gravi poenitentia salutari, et confessione sacramentali singulis mensibus, per tempus arbitrio Dispensantis statuendum.

XI. Dispensandi super occulto impedimento primi, necnon primi et secundi, ac secundi tantum gradus affinitatis ex illicita carnali copula provenientis quando agatur de matrimonio cum dicto impedimento jam contracto; et quatenus agatur de copula cum suae putatae uxoris matre, dummodo illa secuta fuerit post ejusdem putatae uxoris nativitatem, et non aliter; monito poenitente de necessaria secreta renovatione consensus cum sua putata uxore, aut suo putato marito, certiorato seu certiorata de nullitate prioris consensus, sed ita caute, ut ipsius poenitentis delictum nusquam detegatur; et quatenus haec certioratio absque gravi periculo fieri nequeat, renovato consensu juxta regulas a probatis auctoribus traditas; remota occasione peccandi, ac injuncta gravi poenitentia salutari et confessione sacramentali semel in mense per tempus Dispensantis arbitrio statuendum.

Item de speciali et expressa Apostolica auctoritate Vobis facultatem concedimus dispensandi super dicto occulto impedimento, seu impedimentis affinitatis ex copula illicita etiam in matrimoniis contrahendis *dispensandique facultatem subdelegandi, etiam habitualiter, parochis vestrae dioecesis*, quando tamen omnia parata sint ad nuptias, nec matrimonium usquedum ab Apostolica Sede obtineri possit dispensatio absque periculo gravis scandali differri queat, remota semper occasione peccandi, et firma remanente conditione, quod copula habita cum matre mulieris hujus nativitatem non antecedat; injuncta in quolibet casu poenitentia salutari.

XII. Dispensandi super occulto criminis impedimento, dummodo sit absque ulla machinatione et agatur de matrimonio jam

contracto; monitis putatis conjugibus de necessaria consensus secreta renovatione.

Item ex eadam speciali et expressa Apostolica auctoritate pariter facultatem concedimus dispensandi super eodem occulto impedimento, dummodo sit absque ulla machinatione, etiam in matrimoniis contrahendis, in casibus tamen urgentioribus in quibus tempus non suppetat recurrendi ad S. Sedem; injuncta in utroque casu gravi poenitentia salutari, et confessione sacramentali semel singulis mensibus per tempus Dispensantis arbitrio statueudum.

N. B. Mens nostra est: 1º *Ut si forte ex oblivione vel inadvertentia ultra praedictum terminum his facullatibus Vos uti contingat, absolutiones seu dispensationes exinde impertitae ratae sint et validae;* 2º *Ut injunctio confessionis sacramentalis de qua sub nn. x, xi, et xii, non sit* IRRITATIVA *sed tantum* PRAECEPTIVA*;* 3º *Ut his facultatibus non solum singillatim sed etiam cumulatim in uno codemque casu uti possitis.*

Datum Romae ex Aedibus Nostris die 5 Maji 1896.

B. POMPILI, S. P. *Corrector.*
R. CELLI, S. P. *Substit.*

CHAPTER VI.

SACRAMENT OF HOLY ORDERS.

185. It is a dogma of faith that there is in the catholic church a divinely constituted hierarchy consisting of bishops, priests and ministers. This hierarchy is founded not on carnal generation and succession as in the old law, but on election and ordination. Hence holy order is a sacrament by which is conferred permanently the power to consecrate the Holy Eucharist and rightly to perform other ecclesiastical functions. Only a consecrated bishop is the minister of major orders. By special delegation of the Holy See a priest may confer minor orders, the ordinary minister being the bishop. For the validity of ordination, besides other essential requirements the intention of ordaining is required in the bishop; for licity it is also required that the bishop confer orders only on his own subjects, who should be of proper age and have probity, knowledge and a title of ordination. Ordination should moreover be held at proper time and place, and with interstices and after previous proclamation.

186. A person may be the subject of a bishop by reason of a benefice which he peacefully holds in his diocese; by reason of birth in the diocese; by reason of a certain and stable domicile in it; or by reason of being an actual familiar of the bishop, that is, in his

service and supported by him for three full years previously to ordination. In such case the candidate for ordination must produce testimonial letters from the bishop ruling the diocese of his origin or previous domicile. Relatives are not considered familiars unless they actually are in the service of the bishop.

The bishop for a regular with solemn vows is only the bishop of the diocese wherein is situated the monastery in which the candidate lives. The candidate's superiors in the order may grant dimissorial letters to this bishop, and if he is absent, impeded or not intending to hold an ordination, then to any other bishop; but in such case mention of this reason must be made in the dimissorial letters. However, some religious orders by special privilege may have their candidates ordained by any catholic bishop. It should be noted that a bishop is suspended from conferring orders for a year, if he ordains the subject of another without dimissorial letters, or even his own subject who has lived outside the diocese for a time sufficient to contract a canonical impediment, unless he brings testimonial letters from the bishop of such place. (*Cf. Const. Ap. Sedis.*)

187. The candidate for orders should have the necessary requirements, both positive and negative. The positive requirements are age, knowledge, piety. For tonsure at least the age of seven years is required. No age is specified for minor orders, but for sub-deaconship twenty-two years and for deaconship twenty-three is required. A candidate for priesthood must have begun his twenty-fifth year and for the episcopate he must have completed his thirtieth year. The bishop cannot dispense from the

required age; but he may obtain special faculties for the purpose from the Holy See. The ordinandi should have sufficient knowledge and be of good character as well as confirmed in the faith. The negative requirements are freedom from impediments and irregularities. These proceed either from crime or from defect. Of the first kind are homicide or mutilation of the body, iteration of baptism, forbidden exercise of orders, heresy. Of the second kind are, defects of mind, body, condition or lenity.

188. Regarding the title of ordination the Sacred Congregation of the Propaganda on April 27, 1871, issued a special instruction in which these points are prominent. No one, except solemnly professed religious who vow personal poverty, is allowed to be ordained without a title which is his means of support. There are two kinds of title, ecclesiastical and patrimonial. This latter obtains, when the candidate has such an income from certain, stable, unencumbered property, as in the judgment of the bishop will suffice for his decent support. He may also have a perpetual pension or life annuity from property, but in both cases the property should be immovable, or permanent securities. In case of necessity or utility the bishop may ordain a candidate having such title as his means of support.

189. The ecclesiastical title is divided into that of benefice and that of poverty, to which are added as subsidiary or extraordinary the titles of common table, service of the church, mission, sufficiency, college. The titles of college and sufficiency, are no longer used. That of service of the church, also rarely used, means that a cleric is ordained for min-

istering in a certain church which he may not leave, and from which service and the alms of the faithful he derives a sufficient support. The title of poverty (really a negative title) is founded on a religious profession and means that the individual must derive his support from the goods of the religious order and the alms of the faithful given to the order. The title of common table is a similar title used by those clerics who live in community as religious, but take no vows or only simple ones. Not all communities, but only such as have an apostolic indult may use this title of ordination.

190. The title of mission is the one used for those who are to devote themselves to the service of apostolic missions, when no other title can be supplied. Priests ordained with this title receive what is necessary for their support from the missions wherein they labor. But since this is an extraordinary title, not known to common law, it is evident that bishops cannot ordain under it except by special indult of the Holy See and on conditions laid down by it. Thus even in dioceses canonically erected, priests ordained *titulo missionis* still remain under the special protection of the Propaganda and the Congregation always insists on their proper maintenance by the diocese to which they belong. In a strictly legal sense a priest ordained by this title is bound directly to the Propaganda and indirectly to the diocese or province to which he swears to devote his services.

191. The oath taken by the priest who is ordained *titulo missionis* is to the effect that he will not join any religious order or community without the special permission of the Apostolic See and that he will per-

petually labor in the ministry for the good of souls under the entire direction and jurisdiction of the ordinary for whose diocese he is ordained. This oath, it should be remarked, does not give a bishop in a missionary country any more extensive power than a bishop has elsewhere. The general principles of canon law must be observed by both bishop and priest. The same instruction of the Sacred Propaganda says that ordinaries may use the services of priests ordained by other titles than that of mission, and that such priests cannot be forced to change their title for that of mission. On the contrary the Sacred Congregation explicitly asks of ordinaries that other legitimate titles be introduced as much as possible instead of that of mission. In this respect a priest ordained *titulo missionis*, when appointed to an irremovable rectorship, may be supposed to change his title to that of a parochial benefice, and a bishop to that of his diocese.

192. The title of mission, like others, may be lost or taken away by ordinaries with the consent, however, of the Holy See. In such case the priest is not suspended, but should be forced by the bishop to supply another title. (*Cf. S. Cong. Prop. Sept. 1, 1856.*) In the same way regular priests who have made solemn vows and by permission of the Holy See live in the world, or those making simple vows and leaving their congregations or institutes are obliged to procure another title, and in missionary countries they must prove that at least they have sufficient means of support. The Propaganda on February 4, 1873, allowed bishops, before conferring the title of mission on regulars who have left their

order or institute, to send them for a congruous time to some mission on trial. But this does not apply to apostates (runaways) nor to those expelled from the order as incorrigible, for these are perpetually suspended. (*Cf. Cong. Conc. 21 Sept. 1624.*)

193. In the same decision (*S. Prop. Feb. 4, 1873*) the rule was laid down that when a priest, ordained *titulo missionis*, has rendered himself unworthy to exercise the sacred ministry, the bishop should make a declaration to the priest to the effect that "because of such unworthiness he remains deprived of the title of mission and consequently of the right to support from the diocese;" and thereafter so long as the priest perseveres in his preverse way of living, giving no sign of repentance, the bishop is not bound to give him support. At the same time it was intimated that bishops should not proceed to such a final declaration, until after using in vain and repeatedly all paternal admonitions and until they have procured sure proofs, obtained also extrajudicially, of the priest's crimes and public defamation. These proofs in case of recourse will be on record to be sent to the Holy See, or in the United States to the Apostolic Legation, and will ward off trouble from the bishop interested and his successors. (*Cf. n. 120 above, p. 118; II Pl. Coun. Balt. n. 77; "Cum magnopere," art. 45.*)

194. In the United States a priest ordained *titulo missionis* for one diocese may now with the consent of his bishop be adopted into another diocese of the same province without the necessity of consulting the Propaganda. In such case he need but renew his oath for the new diocese when he acquires an

ineat, if he had taken the oath for his diocese previous to Nov. 30, 1885. Since that date the missionary oath is taken not for the diocese but for the province and need not be renewed when a priest, ordained since then, is transferred from one diocese to another within the same province. (*Cf. Decretum S. Cong. Prop. 30 Nov. 1885.*) When a transfer is made from one province to another, the consent of the Propaganda is required as formerly. A virtual incardination into a diocese, no matter what the title, occurs *ipso facto* at the expiration of three and of five years' service unless the bishop has explicitly stated the contrary to the priest before the end of such respective period. (*III Coun. Balt. n. 63.*)

195. As to the ordination itself, it should not be *per saltum* and proper interstices should be kept unless an apostolic faculty for dispensation is used. Even in such case minor orders and sub-deaconship should not be conferred on the same person in one day, nor two of the major orders. Still no punishment is attached to such reception of orders. The time for giving orders is any day and hour for tonsure; Sundays and holy days of obligation (also suppressed) for minor orders, and during mass as a matter of propriety. Holy orders are given on the Saturdays of the ember weeks, the Saturdays before Passion and Easter Sundays, and always during mass. Bishops should be consecrated only on Sundays and feasts of the apostles during mass at nine o'clock in the morning. A general ordination must be held in the cathedral, (*S. R. C. 16 Sept. 1747*) but if only a certain few are to be ordained it may be held in any church and also in the bishop's private

chapel. (*Cf. S. C. Conc. in Melit. 20 Nov. 1592.*)

196. An announcement of the ordination to be held and of the persons of the parish to be ordained is to be made by parish priests one or two months before the ordination occurs, so that any objections or impediments may be made known. (*Cf. Conc. Trid. c. 5, sess. 23 de reform.*) The parish priest will then give testimonial letters regarding the birth, age, life, character of the ordinandi. A second examination is made by the bishop through his appointed examiners who will inquire into the knowledge of the candidates. The third examination—a merely formal one—is made by the bishop himself during ordination when he asks the arch-deacon whether he knows the candidates to be worthy. To this the arch-deacon replies according to his public not private knowledge.

The special faculties conferred on bishops of the United States regarding ordination are given below in chapter VIII.

197. When the bishop intends holding a general ordination the following edict or notice should be published in proper form:

"N— Bishop of N—. To each and all who dwell within the limits of our diocese and jurisdiction, also to regulars, by these presents We give notice that We shall solemnly hold a general ordination in our cathedral on the Saturday of the spring ember week which will be the —— day of —— of the present year. Wherefore those who desire to be promoted to the various sacred orders, in accordance with the Sacred Council of Trent, sess. 23, c. 5, de reform., will express to Us their desire a month previously to the time for ordination, and later will present them-

selves before Us and our examiners in our episcopal residence at ten o'clock a. m. of the Wednesday preceding the ordination, i. e. on the —— day of —— A. D. ——, to be examined in accordance with law. Those wishing promotion to minor orders will also appear for examination at the same time and place, and all will bring with them the necessary testimonial letters regarding age, birth, character, previous orders and other requisites, in order that those found fit and worthy may be admitted. To this end We command all pastors of our city and diocese to publish this edict during mass on the first Sunday after receiving it, and to make proper report to Us concerning the various candidates for ordination who may belong to their respective parishes, under sanction to be inflicted in accordance with our discretion. Given &c. N. N. Bishop of N.

N. N. Bishop's Chancellor."

198. The announcement of the parish priest may be made in these or similar words:

"N. N. of this parish wishes to receive tonsure (minor orders, sub-deaconship) at the coming ordination. Wherefore if anyone knows of any canonical impediment on account of which he should not receive orders, such a one is obliged in charity and by virtue of holy obedience to make such impediment known to me within eight days, to the end that if no such impediment is discovered the said N. N. may receive (tonsure) orders."

The pastor should mention and explain the impediments. The letter of the pastor testifying to the proclamation may be:

"I, the undersigned pastor of St. —— church in N— testify that during mass on a Sunday, i. e. on —— day of —— A. D. ——, I announced that N. N.

wishes to receive tonsure sub-deaconship) and after pointing out the different impediments which might prevent such reception (or ordination) I admonished all and everyone conscious of any such impediment to make it known to me in charity and holy obedience. I further testify and certify that no impediment was discovered. In testimony whereof I have given these letters under oath signed by my own hand and sealed this —— day of —— A. D. ——.

N. N. Parish Priest of N—."

199. The parish priest's certificate of baptism for a candidate for tonsure may be worded thus :

"Ego, infrascriptus rector (vel parochus) ecclesiæ S— in N— præsentibus litteris testor N. N. in —— ætatis anno constitutum, filium legitimum et naturalem N. et N. conjugum, ex hac mea parochia, fuisse baptisatum sub die —, prout constat ex libro baptisatorum hujus parochiæ, in quo sic habetur; (ponantur ipsamet verba libri.) In cujus fidem præsentes litteras etiam juramento interposito manu propria subscripsi et sigillo meo munivi, die —. m. —— A. D. —.

N. N. Parochus."

If it should happen that no record of baptism can be procured, and the candidate is born of catholic parents and among catholics, this fact alone is sufficient presumption of baptism and is considered proof of it unless proofs are advanced to show he was not baptised. (*Cf. C. veniens in fine de Pres. non bapt.*) Even if a person is born of catholic parents among heretics, dimissorial letters cannot be refused because a certificate of baptism is wanting. (*S. Cong. Epp. in Laud. 30 Aug. 1619.*) Often the sworn testimony of witnesses to the baptism may be procured to remedy the deficiency in the record.

200. Following is the form for testimonial letters of the diocesan chancellor certifying to a title of benefice:

"Ego infrascriptus curiæ episcopalis N— cancellarius per præsentes fidem facio, clericum N. N. qui ad sacros ordines promoveri cupiat, revera beneficium habere ecclesiasticum in ecclesia S. N. hujus diœceseos sub invocatione S. N. erectum, (prout constat ex litteris collationis illi factæ per N— mihique exhibitis) illudque annui redditus scutatorum—— vere et pacifice possidere, prout testes super his formiter a me examinati deposuerunt. Insuper testor Rev$^{\underline{mum}}$ D. Vicarium generalem pronunciasse et decreto declarasse præfatum beneficium esse sufficiens, ita ut idem clericus N. N. ad illius titulum sacris ordinibus initiari valeat, ut constat ex meis actis. In quorum fidem has litteras meo solito sigillo meaque manu roboravi. Die &c. Ita est.

N. N. Cancellarius Episcopalis."

201. Following is the diocesan chancellor's certification regarding the title of patrimony under which a candidate seeks ordination from his bishop:

"Per præsentes litteras testimoniales omnibus ego infrascriptus cancellarius fidem facio clericum N. N. patrimonio præditum esse, prout constat ex instrumento assignationis et constitutionis ejusdem facto die —— m. —— A. D. ——, per notarium N. N. mihique exhibito, idemque patrimonium consistere in prædio (vel alias) et esse annui redditus —— scutatorum. Insuper testificor dictum patrimonium a Rev$^{\underline{mo}}$. D. Vicario generali hujus curiæ esse approbatum, ita ut ad titulum illius dictus clericus N. N. ad sacros ordines promoveri valeat, si ita videbitur expedire Ill$^{\underline{mo}}$ et Rev$^{\underline{mo}}$ D. Episcopo. Denique testor supradictum N. N. vere et pacifice dictum patrimonium possidere et fructus percipere, prout

testes super prædictis a me examinati deposuerunt, ac de omnibus constat ex meis actis. In quorum &c.

N. N. Cancellarius Episcopalis."

202. Following is a copy of the oath to be taken and signed by a cleric to be ordained *titulo missionis*. The paper is to be retained in the chancery:

"Ego N— filius N— diœcesis (vel vicariatus) N— spondeo et juro quod postquam ad sacros ordines promotus fuero, nullam religionem, societatem aut congregationem regularem sine speciali Sedis Apostolicæ licentia aut S. Congregationis de Prop. Fide ingrediar neque in earum aliqua professionem emittam. Voveo pariter et juro quod in hac diocesi (vel vicariatu) et (inseri debet *provincia* ex decreto S. C. Prop. Nov. 30, 1885) provincia perpetuo in divinis administrandis laborem meum ac operam sub omnimoda directione et jurisdictione R. P. D. pro tempore Ordinarii pro salute animarum impendam, quod etiam præstabo si cum prædictæ Sedis Apostolicæ licentia religionem, societatem aut congregationem regularem ingressus fuero et in earum aliqua professionem emisero. Item voveo et juro me prædictum juramentum et ejus obligationem intelligere et observaturum. Sic me Deus adjuvet et hæc sancta Dei evangelia."

203. Application for a change of province may be made to the S. Propaganda in this form:

"Eminentissime Princeps.

N. N. sacerdos titulo missionis ordinatus pro diœcesi N—, annuente suo Episcopo humiliter petit dispensationem a juramento die —— m. —— A. D. —— emisso, ita ut in diœcesim N— alterius provinciæ ecclesiasticæ licite sub simili titulo missionis et juramento incorporari valeat.

Purpuram deosculans, summa qua par est reverentia et devotione permaneo,

Eminentiæ Vestræ
Submississimus ——"

"Libenter annuimus et commendimus.
N. N. Episcopus N."

204. When regulars are to receive from their superiors dimissorial letters for ordination they first obtain a certificate of examination and competence from the examiners of the order; but the bishop may also examine them (except the Jesuits) before ordination. Following is a form for certifying to examination:

"Nos infrascripti pro examinandis alumnis juxta ordinis constitutiones deputati, cunctis ad quos spectat providere, per præsentes testamur clericum N— in nostra religione professum et in ordinibus N— exercitatum, coram nobis personaliter constitutum et probe examinatum, fuisse ad ordines sacros idoneum et habilem repertum; ipsumque propterea qui ad episcopum suum ordinarium dimittatur pro illis suscipendis dignum reputamus. In quorum &c. Datum &c.

N. N. S. Theologiæ professor et ordinis examinator.
N. N. S. Theologiæ professor et ordinis examinator."

205. Following is a form for dimissorial letters to be given by the superior of a regular order that an inferior may be ordained by the diocesan bishop:

"N.N. in sæculo N.N. (ordinando) salutem. Humilitas et pietas quas profitemur nos cogunt et impellunt ut selectos et probatos juvenes (vel ministros) ad serviendum Deo in nostra religione cœlitus vocatos ad sacra munera obeunda promoveri ad ordines curemus. Cumque te ad habitum religionis admissum (*vel* libera voluntate in religione nostra professum) et in

conventu N— de familia existentem, debita ætate, morumque honestate præditum, legitimis natalibus ortum, sacro chrismate delibutum, nec aliquo canonico impedimento, quod sciamus, innodatum; necnon per examinatores nostros idoneum repertum et admissum noverimus; tenore præsentium cum salutaris obedientiæ merito, ad Ill$^{\underline{mum}}$ et Rev$^{\underline{mum}}$ D. Episcopum tuum N. N. mittimus, eumque humiliter rogamus ut tibi sic dimisso et licentiato, his proximis quatuor temporibus mensis —— (vel alio tempore juxta circumstantias) clericalem tonsuram, ostiariatus, lectoratus, exorcistatus et acolitatus ordines minores pro necessitate nostrarum ecclesiarum omnes simul (si sibi expedire videatur) interstitiis etiam non servatis, (pro sacro ordine inseritur "ad titulum religiosæ paupertatis") conferre dignetur. Pro quo et etiam pro nobis Deum precari non cessabis. Datum &c.

[L. S.] N. N. Provincialis Ord. N.
N. N. Secretarius."

By making proper changes the above form may be used by a regular superior in granting dimissorial letters for sacred orders. In such case the order which the candidate has already received should be mentioned and also the title "ad titulum religiosæ paupertatis" under which he is to be ordained.

206. When the diocesan bishop is not holding an ordination and regulars therefore wish to be ordained by some other bishop the following form of letters should be obtained for presentation to the bishop who is requested to ordain such regulars:

"Universis et singulis præsentes litteras testimoniales inspecturis notum facimus et testamur, quod in proximis quatuor temporibus futuris mensis — in hac civitate N— neque in alio diœcesis loco ob adversam valitudinem (sive aliud impedimentum)

Illustrissimi et Reverendissimi D. mei Episcopi, ordinationes non celebrabuntur. In quorum fidem &c. Datum &c.

[L. S.] N. N. Vicarius Generalis.
N. N. Cancellarius."

207. Following is a form of letters testifying to the ordination of an individual:

"N. Dei et Apostolicæ Sedis gratia Episcopus N. Universis et singulis præsentes nostras testimoniales litteras visuris et lecturis fidem indubiam facimus et testamur quod Nos die —— mensis —— anni ——, (sabbato quatuor temporum vel alias) generalem ordinationem habentes in nostra ecclesia cathedrali inter missarum solemnia, dilectum in Christo N. N. (si est exterus inseritur "cum litteris dimissorialibus Rmi N. N. sui Ordinarii") examinatum, approbatum, idoneumque repertum per examinatores a Nobis deputatos, ad ordinem (si ordo est sacer exprimat titulum missionis, patrimonii vel alii ad quem ordinavit) juxta ritum S. R. Ecclesiæ, servatis forma Sacri Conc. Tridentini ac decretorum S. Congregationum aliisque de jure servandis, in Domino rite promovimus.

[L. S.] N. Episcopus N.
N. Cancellarius Episcopalis."

208. When a person has been ordained by dispensation the following form may be used with proper changes:

"N. Dei et Apostolicæ Sedis gratia Episcopus N. Per præsentes cunctis testamur, quod Nos, vigore facultatum a Sancta Sede Nobis die—— A. D. —— concessarum, in nostra ecclesia cathedrali (vel capella) dilectum Nobis in Christo N. N. examinatum, approbatum, idoneumque repertum et dispensatione Apostolica ab impedimento — habilem effectum, die — mensis — A. D. — ad subdiaconatus, die vero—

ejusdem mensis et anni ad diaconatus, die denique — ejusdem etiam mensis et anni ad presbyteratus sacros ordines ad titulum missionis inter missarum solemnia, adhibitis solemnitatibus juxta ritum Sanctæ Romanæ Ecclesiæ et servatis forma Sacri Conc. Tridentini aliisque de jure servandis promovimus. In quorum &c.

[L. S.] N. Episcopus N.

N. N. Cancellerius Episcopalis."

209. The following form of dimissorial letters may be used with proper changes when a bishop grants permission to another bishop to ordain a subject who is absent from his diocese in a seminary:

"N. Dei et Apostolicæ Sedis gratia Episcopus N. Dilecto Nobis in Christo N. N. salutem in Domino: Ut tu, a nostra diœcesi studiorum causa absens, qui legitimis es procreatus natalibus, (morum probitate ornatus—satius omittitur si absentia est longa) ætate legitima, ac in clericali tonsura constitutus, nulloque, quod sciamus, canonico impedimento, quominus ad ordines promoveri possis, reperiris detentus, ab Illmo et Revmo D. N. N. in propria vel aliena diœcesi, de Ordinarii loci licentia ordinationes tenente (vel a quocunque Illmo et Revmo D. Antistite rite et canonice promoto gratiam et communionem Sanctæ Sedis Apostolicæ habente, quem ideo adire malueris) ad ostiariatus, lectoratus, exorcistatus et acolytatus minores ordines promoveri possis et valeas; dummodo quoad litteraturam idoneus reperiaris, super quo conscientiam ordinantis oneramus, et intra sex menses præsentibus utaris et non alias, tua absentia non obstante, licentiam et facultatem utrique concedimus. In quorum &c. Datum &c.

[L. S.] N. Episcopus N.

N. N. Cancellarius Epis."

If the dimissorial letter is directed to the Cardinal

Vicar of Rome or to any other cardinal the clause "super quo conscientiam ordinantis oneramus" is omitted on account of his dignity. In such case also the title "Eminentissimus N. Cardinalis N." should be inserted.

210. Following is a form which may be used for dimissorial letters for a student in Rome:

"N. Episcopus &c. Tibi dilecto Nobis in Christo N. N. legitimis natalibus procreato, in acolytatus ordine (vel tonsura clericali) et ætate legitima vigintiquatuor annorum completorum constituto, morumque probitate ornato, in ecclesia parochiali N. ex præscripto S. Conc. Tridentini proclamato, nullaque censura ecclesiastica aut alio canonico impedimento innodato, quod sciamus, aliisque a jure requisitis prædito, ut ab Eminentissimo et Reverendissimo D. Cardinali N. Urbis Vicario, sive illius Ill^mo^ et Rev^mo^ vices Gerente in eadem Urbe, pontificalia exercente, statutis a jure temporibus ad sacros subdiaconatus, diaconatus et presbyteratus ordines debitis servatis interstitiis aut illis non servatis cum dispensatione tamen Apostolica, ad titulum missionis, pro utilitate nostræ diœceseos, præstito prius consueto juramento, promoveri possis et valeas licentiam et facultatem in Domino impertimur et concedimus; dummodo tamen quoad scientiam idoneus et habilis reperiaris, cum Nos propter tuam absentiam a nostra diœcesi de ea cognoscere nequiverimus. Volumus etiam, ut tu postquam fueris ordinatus, præcipue in ordine presbyteratus, exhibere tenearis in nostra cancellaria testimoniales litteras tuæ ordinationis infra duos menses sub pœna suspensionis ipso facto incurrenda, Nobis reservata. In quorum &c. Datum &c.

[L. S.] N. Episcopus N.

N. N. Cancellarius Epis."

211. When a person is to be ordained for another diocese, it is required that he present testimonial

letters from the bishop of the diocese wherein he has dwelt a sufficient time to contract an impediment. Before giving letters of recommendation the bishop should make diligent inquiries. The testimonial letters must be given and signed by the bishop himself, not by the vicar general unless by special mandate which should then be mentioned. (*Cf. S. Con. Conc. supra c. 8, sess. 23 de reform.*)

"N. Episcopus &c. Per præsentes cunctis indubiam fidem facimus atque testamur, dilectum in Christo N. N., qui ratione originis (vel alias) huic nostræ jurisdictioni noscitur subjectus, pro tempore quo in loco N— in quo ex legitimo matrimonio natus, educatus et commoratus fuerit, suæ probitatis specimen dedisse, bonaque fama, vita ac moribus præditum fuisse et ex hac nostra diœcesi annos natum — nullo delicto quod infamiam irroget patrato, nullaque ecclesiastica censura aut alio canonico impedimento, quod sciamus, innodatum discessisse, quominus ad minores seu majores sacros ordines ab Illmo et Revmo D, Episcopo N. N. juxta canones promoveri possit. In quorum fidem has testimoniales litteras manu nostra subscriptas expediri jussimus. Datum &c.

[L. S.] N. Episcopus N.
N. N. Cancellarius Episcopalis"

212. Testimonial letters combined with commendation are given by the bishop to a priest about to leave the diocese on vacation or business. Following is a general form:

"N. N. Dei et Apostolicæ Sedis gratia Episcopus N.

Dilecto Nobis in Christo Revdo D. N. N. (S. T. D.) Rectori (presbytero) ecclesiæ S. N—, in loco N. diœcesis nostræ, salutem in Domino. Cum propter rationes a Nobis cognitas et admissas ab ecclesia tua abesse cupias, libenter tibi, relicto in cura substituto

a Nobis prius approbando, licentiam discedendi per tres menses tantum valituram concedimus et impertimur; attestantes te esse sacerdotem bonis moribus imbutum et ab hac nostra diœcesi abire nullà censura ecclesiastica neque alio canonico impedimento aut pœna, quod sciamus, irretitum. Quare omnes ad quos declinabis, præsertim in Christo PP. Illmos et Revmos Episcopos aliosque ecclesiarum ministros et officiales rogamus, ut ad sacrificium missæ celebrandum et ad alia divina officia exercenda admittant et in cunctis faveant ac tueantur. In quorum fidem præsentes litteras manu nostra signatas sigilloque nostro munitas exarari jussimus. Datum &c.

[L. S.] N. Episcopus N.
N. N. Cancellarius Episcopalis."

213. Following is a form of commendation for a priest living away from his diocese with permission:

"N. Episcopus N. Dilecto Nobis in Christo Revdo N. N. Tibi qui nullum officium nec beneficium quod residentiam requirat in hac diœcesi possides et a nonnullis annis ad tua honesta negotia peragenda (vel ad valitudinem conservandam) ab eadam cum licentia nostri prædecessoris (vel nostra) discessisi; modoque Romam (vel Europam) petere cupis, prout certiores Nos fecisti, obedientia simul præstata, licentiam libenter concedimus et in Domino impertimur; attestantes te esse sacerdotem bonis moribus imbutum et discessisse ab hac diœcesi nulla censura ecclesiastica seu canonico impedimento irretitum, quod sciamus, quominus sacrificium missæ ubique de licentia Ordinarii locorum, et alia divina officia celebrare possis. In quorum &c. Datum &c.

[L. S.] N. N. Episcopus N.
N. N. Cancellarius."

214. It is sometimes necessary to certify to the health or life of a cleric, so that he may resign in

favor of another or may continue drawing a pension or annuity. The following form may be used in such and similar cases with proper changes:

"'N. Episcopus N. (sive vicarius generalis N.) Universis fidem indubiam facimus et testamur per præsentes N. N. bona et firma valetudine præditum, sanum et incolumem vivere ut ex ejus aspectu et colloquio hodie in hac civitate cum illo habito dignoscere potuimus, et sic publice ab omnibus reputari percipimus. Ideo ad ejus instantiam has testimoniales litteras nostra manu subscriptas et sigillo munitas expediri jussimus. Datum &c.

[L. S. N. Episcopus N. sive Vicarius G.
N. N. Cancellarius."

CHAPTER VII.

SACRAMENT OF MATRIMONY.

215. Matrimony is a sacrament by which a baptised man and woman are legally united by their mutual consent in an indissoluble marriage. From the very institution and nature of this sacrament and from the will of Christ instituting it, in the marriage of baptised persons the contract itself and the sacrament are inseparable. Hence the right of making laws regarding the marriage of christians pertains to the church which is the guardian of the sacraments. The marriage of unbaptised persons is not subject to ecclesiastical law, but is regulated by the state. The state may also make for its own needs certain external regulations for the marriage of christians, such as requiring a license stating the ages, occupation and other qualities of those intending to get married.

216. For the validity of a marriage it is required that the parties be competent, that their consent be expressed by words of the present tense, and, where the decree "*Tametsi*" is published, also before the parish priest and two witnesses. (*See note p. 233.*) It should be noted that a marriage whose nullity is known in the forum of conscience, cannot therefore be declared null in the public forum. Neither can the parties be allowed to re-marry so long as the

impediment of the previous marriage remains occult and the nullity is not proved in the external forum. Hence the impediment should be made known and a public declaration of nullity obtained.

217. For the licity of marriage it is required that usually the consent of parents be obtained, and that previous proclamation of the intended marriage be made three times in the parish church of the contracting parties. At least one proclamation should be made also in those regions and parishes in which the council of Trent has not been published. (*Cf. Zitelli, App. J. E. p. 403.*) Through decisions of the Sacred Cong. of the Council, although the question of law was not decided, it follows from the principles quoted, that the proclamations may be made also on suppressed feast-days, provided there is a solemn celebration and a concourse of people. (*June 17, 1780; Apr. 19, 1823; Apr. 7, 1862.*)

The proclamations of the banns should be made only at the request of the contracting parties themselves, after inquiring whether both freely consent to the marriage. Parish priests may not omit the proclamations without the consent of the ordinary, and bishops are admonished by Benedict XIV, *Const. Satis Vobis*, not to be easy in remitting the proclamations. Nevertheless when there is a legitimate reason a dispensation not only may but sometimes should be given from even all proclamations. The bishop, his vicar general and the administrator of a diocese may grant such dispensation. A parish priest may also do so, when recourse to the bishop cannot be had and when at the same time the cause is such and so great that the bishop is bound to grant

the dispensation. Legitimate reasons for dispensation are: Probable fear or suspicion that the marriage will be impeded maliciously, or danger for body, soul or reputation of the contracting parties.

218. The punishment for omitting the proclamation of the banns is suspension for three years. This however, is *ferendæ sententiæ.* (*Cf. C. Cum inhibitio de Clan. Spon.*) "Si parochialis sacerdos tales (contrahentes) sine denuntiationibus conjunxerit, per triennium ab officio suspendatur." The second punishment is a penance for the contracting parties, and the third is that, if a diriment impediment renders such a marriage null, the offspring will be considered illegitimate and a dispensation from the impediment will be obtained only with great difficulty.

219. Matrimony is to be celebrated in the parish church, not in private oratories and much less in private houses unless the ordinary gives special permission. (*S. Cong. Propaganda in reply to the Archbishop of St. Louis, Jan, 1898; Cf. Monacelli, 1, t. 2, f. 2, n. 7.*) Marriage should be celebrated in the morning, not in the evening, chiefly because there should be a nuptial mass without which the special nuptial blessing cannot be given. This blessing should not be confounded with that of the Roman ritual, which can be given always. Further it should be noted that "although spouses should be exhorted to receive the nuptial blessing (given only in mass) still they cannot be compelled to receive it" and therefore cannot be compelled to the mass. (*Cf. S. R. C. Sept. 1, 1838.*) The sacrament of matrimony should be received in the state of grace, and the parties should receive holy communion during

the nuptial mass. Regarding the marriage of those who are notoriously under censure of the church, such for instance as belong to condemned societies, according to an instruction of the Sacred Penitentiary, Dec. 10, 1860, the pastor should strive to get the party to become reconciled with the church. If this is impossible and grave complications would ensue unless the marriage were performed, the pastor should consult the ordinary who after carefully weighing the circumstances will decide what had best be done, always excluding the celebration of mass.

220. It is a dogma of catholic faith that lawful and consummated marriage cannot be dissolved except by the death of one or the other party. Even adultery is not a cause for full divorce, though it is a sufficient reason for perpetual separation without the re-marriage of either party. A separation may also be licit by mutual consent for reasons of greater perfection when one or both parties enter religion. Another cause is heresy or apostacy from the faith and a fourth cause is any grave danger for soul or body, so long as such danger lasts. In all such cases the ecclesiastical judge should be consulted and a declaration obtained.

221. There are some impediments which render marriage illicit, though not invalid. A simple vow of chastity taken either in a religious community or privately, unless a dispensation is previously obtained, renders the contracting party, thus impeded, guilty of mortal sin. The simple vows taken by members of the Society of Jesus render later marriage also null as well as illicit.

Marriage should not be solemnized during the for-

bidden times, that is from the first Sunday of Advent to Epiphany and from Ash Wednesday to the octave of Easter inclusively. During these times marriage may be celebrated, but without solemnity. (*Cf. Benedict XIV, Inst. 80.*) Sometimes by special law or custom the marriage itself is prohibited, and then permission for it is required from the ordinary. During these closed times the special nuptial mass and blessing are forbidden; neither should there be a wedding feast.

A promise of marriage to another person is an impediment prohibiting marriage with anyone else until proper dispensation or solution of the obligation has been obtained. A special prohibition, either of the bishop or the Roman Pontiff while a supposed impediment is being investigated or for some other cause, is also a prohibiting impediment.

222. The impediment of mixed religion is a prohibition of marriage between catholics and baptised persons who are not catholics. If the non-catholic party is not even baptised then the impediment becomes also a diriment one, and is called "disparity of worship." The church has always been opposed to these marriages because of the danger of perversion for the catholic party and the children and because of the communion of catholics with heretics or schismatics in sacred things. Only the Roman Pontiff for a grave reason can dispense in these marriages. When a catholic asks for a dispensation to marry a non-catholic the ordinary should endeavor to procure the conversion of the non-catholic party, or dissuade the catholic from the marriage. If this is not possible and if there are just reasons for dispen-

sation, or a well-grounded fear of a civil marriage, then, if the ordinary has an apostolic indult, as our bishops have, he may grant a dispensation, provided there is no fear of perversion for the catholic party, and provided the non-catholic party sign and intend to keep promises, that 1° he will not interfere with the religion of the catholic party, 2° that all children born of the marriage shall be brought up catholics. The catholic party should also agree to work for the conversion of the non-catholic to the true faith.

These marriages are to be celebrated not in the church but in the parochial rectory, and the priest is not allowed to use any sacred vestments, nor give the nuptial blessing. In special cases where graver dangers are feared from a refusal, the ordinary may allow the priest to use the usual form of the Ritual for marriage, but always excluding the celebration of mass. (*Cf. Putzer Comment. in Facultates, n. 219.*)

223. The diriment impediments which render marriage null are induced either by natural or divine law or by ecclesiastical law. All, even unbaptized persons, are bound by impediments of natural or divine law; only baptised persons are bound by those of ecclesiastical origin. Heretics are bound by these impediments even that of clandestiny, except where in certain circumstances they are declared free therefrom.

Defective consent is a diriment impediment. Consent may be defective because of a substantial antecedent or concomitant *error* regarding the person, but not regarding the qualificatious of the spouse. This impediment is founded on natural law.

A *condition of slavery* in which one or both con-

tracting parties exist unknown to the other, is a diriment impediment. This impediment does not affect the person substantially, but only accidentally and is therefore of ecclesiastical not natural law.

The impediment of *force or fear* is present when the fear is great and produced by a free cause, unjustly inducing it in order to extort marriage. It seems a very difficult impediment to prove legally.

224. The impediment of *abduction* is the violent carrying away of a woman for the sake of marrying her. For this impediment to exist it is necessary that the woman be really abducted or transferred from one place to another, that she be unwilling and that the abduction be made for the reason of marrying her. This impediment endures so long as the woman is in the power of the abductor. Excommunication is inflicted on abductors of women and they become perpetually infamous as well as all who assist in the abduction. It matters not whether the woman be a virgin or a widow, whether of good or bad morals, provided she be abducted for the cause of marriage.

225. Immature *age* is a diriment impediment of ecclesiastical origin. Males must be fourteen and females twelve years of age before marriage can be legally contracted, unless wickedness has supplied for defective age. *Insanity* is also an impediment because of want of free will.

Perpetual *impotence* before marriage is a diriment impediment founded on natural law, especially if impotence is absolute. In matrimonial cases regarding this impediment the various prescribed solemnities must be exactly followed, as found in the instruction

of the Propaganda, (*Causæ Matr. 1884, n. 46,*) and the impotence must be fully shown. (*Cf. Feije De Imped. Mat. c. 24.*)

226. The defect of liberty or the *bond of a prior marriage* is a diriment impediment to a subsequent marriage; but it is required that the prior marriage be validly contracted and that it still exist. A marriage once validly contracted ceases to exist by the death of one or the other party. Among baptised persons, a marriage which is validly contracted indeed, but not yet consummated, also ceases by papal dispensation *a matrimonio rato et non consummato*, and by the solemn vows made by one of the spouses in a religious order. Among unbaptised persons, when marriage has been validly contracted and even consummated, and one party becomes converted to the catholic faith and the other refuses to live with the converted party without contumely of the Creator, the convert, using the Pauline privilege, may contract marriage with a catholic and the former marriage becomes dissolved by the latter. To prevent complications a civil divorce should be obtained under direction of the ordinary. The interpellation of the infidel spouse should be made in regular form whenever possible. When not possible an apostolic dispensation may be granted, for which some bishops have an indult; but in such case a summary of the facts showing the impossibility of interpellation should previously be made and preserved, and a minute thereof entered in the marriage record.

227. The impediment of *crime* is of ecclesiastical origin for the protection of married life. In order to remove temptation, the church invalidates marriage

between partners in certain crimes, adultery and murder, which are committed with a view of breaking up an existing marriage and contracting a new one. Also in order that marriage may always be proved and may not be kept secret the impediment of *clandestinity* was decreed by the council of Trent. Where this decree, called "*Tametsi*," has been published, the marriage of baptised persons must be celebrated before their parish priest and two witnesses, otherwise it is declared null and invalid. (*See note p. 233.*) The Holy See has made special declarations regarding heretics who dwell in countries where the decree has been published.

228. *Relationship* is a diriment impediment and it has various forms. Natural or carnal relationship prohibits marriage in the direct line indefinitely and collaterally to the fourth degree. Spiritual relationship arising on account of the sacraments of baptism and confirmation, prohibits marriage between the person who baptises or the sponsors on the one side, and the person baptised or confirmed or his father or mother on the other. Relationship by marriage, called affinity, prohibits and dissolves marriage between the husband and the relatives of his wife to the fourth collateral degree, and between the wife and the relatives of her husband also to the fourth degree collaterally. In the direct line the impediment extends indefinitely. In cases of illicit or extra-matrimonial intercourse affinity impedes marriage to the second collateral degree, and indefinitely in the direct line.

229. *Public honesty* is an impediment arising from absolute or valid espousals or betrothal and annuls

marriage between the man and the relatives of the woman, and vice versa, to the first degree for a betrothal, but for a ratified marriage to the fourth degree included. It is entirely of ecclesiastical origin.

Another impediment, also of ecclesiastical origin, is a *sacred order*, which, especially since the council of Trent, prohibits marriage under pain of nullity, without however dissolving it if already contracted.

Solemn vows taken in a religious order either by a man or a woman are a diriment impediment to subsequent marriage, and also annul a previously contracted marriage if unconsummated.

For an extended treatment of the various impediments special treatises should be consulted. The bishops of the United States have extensive faculties from the Holy See for dispensing in matrimonial impediments. A list of these faculties is given in the following chapter. Some forms useful in matrimonial cases are given below.

230. Testimonial letters showing freedom to marry:

"N. Episcopus N. Universis et singulis ad quos præsentes nostræ litteræ pervenerint, fidem facimus et testamur N. N. de loco N. nunquam habuisse nec de præsenti habere virum (vel uxorem,) sed esse in statu libero ad matrimonium contrahendum, prout ex depositionibus testium, coram nostro vicario generali medio eorum juramento examinatorum, plene constat. In quorum &c. Datum &c.

[L. S.] N. Episcopus N.

N. N. Cancellarius Epis."

If the letter is to certify only for the time during which a person was in the diocese these words may be used with the above form: "attestamur N. N. de

loco N— mense — anno — discessisse ab hac diœcesi in statu libero &c."

231. Permission to contract marriage during the forbidden times may be given in the following form:

"N. Episcopus N. &c. Tibi N. N. parocho (vel presbytero) ecclesiæ N. ut in matrimonium per verba de præsenti in facie ecclesiæ, præmissis in tribus continuis diebus festivis denuntiationibus, ac servata in reliquis forma in Rituali Romano præscripta, N. N. et N. N. nullo detecto ad contrahendum impedimento, absque tamen personarum comitatu, omissaque omnino benedictione nuptiali, necnon conviviis et aliis vanæ lætitiæ signis, conjungere possis, non obstante tempore currenti adventus (vel quadragesimæ) justis de causis facultatem concedimus et dispensamus. Datum &c.
[L. S.] N. N. Cancell. Epis. N. Episcopus N."

232. The bishop has an undoubted right to prohibit the celebration of marriage in a private house. (*Cf. Monacelli, I, t. 8, f. 11; Reply of Propaganda Jan. 1898, to the Archbishop of St. Louis.*) But if there should be good and sufficient reasons the bishop may grant permission to have the ceremonies of the Roman Ritual, not the mass, performed in the home of one of the contracting parties. Following is a form:

"N— Episcopus N— &c. Tibi, N. N., parocho (vel presbytero) ecclesiæ N— ut in matrimonium per verba de præsenti et servata forma in Rituali Romano præscripta, absque tamen benedictione nuptiali, et dummodo factæ fuerint tres publicationes in ecclesia diebus festivis continuis, et nullum detectum sit impedimentum ad contrahendum, domi conjungere possis N. N. et N. N. licentiam et facultatem concedimus justis de causis. Datum &c.
[L. S.] N. N. Cancell. N. Episcopus N."

In case of a mixed marriage this form may be used:

"N— Episcopus N— &c. Tibo N. N, parocho (vel presbytero) ecclesiæ N— ut in matrimonium per verba de præsenti, et servata forma in Rituali pro mixtis matrimoniis præscripta, omissaque omnino missa cum benedictione nuptiali, dummodo non aliud impedimentum detectum fuerit quam disparitatis cultus (mixtæ religionis) super quo vi facultatum a SS. Papa Nostro N. die —— m.—— anno ——Nobis ad quinquennium concessarum, jam dispensavimus, domi conjungere possis N. N. et N. N. licentiam et facultatem justis de causis concedimus. Datum &c.

[L. S.] N. Episcopus N.
N. N. Cancellarius Epis."

233. When objection is made to a marriage because of a previous betrothal, the bishop having examined the objection and made a judicial decree that it is irrelevant may use the following form:

"N. Episcopus N. &c. Tibi N. N. parocho (vel presbytero) ecclesiæ N— ut in matrimonium per verba de præsenti in facie ecclesiæ, factis prius in tribus continuis diebus festivis denuntiationibus, ac in reliquis servata forma in Rituali Romano præscripta, N. N. et N. N., nullo alio detecto impedimento ad contrahendum, quam assertorum sponsalium cum N. N., conjungere possis facultatem concedimus; quoniam opposita sponsalia per dictam N. N. non obstare censemus. Datum &c.

[L. S.] N. Episcopus N.
N. N. Cancellarius Episcopalis."

234. When parties have obtained from the Holy See a dispensation, the bishop may use this form in verifying it and ordering its execution:

"N. Episcopus N. &c. Tibi N. N. parocho (vel presbytero) ecclesiæ N— ut in matrimonium per

verba de præsenti in facie ecclesiæ, præmissis in tribus continuis diebus festivis denuntiationibus, ac servata in reliquis forma in Rituali Romano præscripta, nullo alio detecto ad contrahendum impedimento, quam primo affinitatis gradu (vel alio) quo invicem sunt conjuncti, super quo dispensationem apostolicam obtinuerunt, conjungere possis licentiam et facultatem concedimus; quoniam verificatis coram Nobis expositis in dicta dispensatione, illam exequi volumus et mandamus. Datum &c.

[L. S.] N. Episcopus N.

N. N. Cancellarius Episcopalis."

235. Following is a form of interpellation to be used before declaring that the Pauline privilege is applicable:

"By the commission and command of the Most Reverend N. N. Bishop of N. and at the request of N. A. a convert from infidelity, called before baptism N. B., I, the undersigned hereby require, ask and warn N. C. the consort of the above mentioned N. A. to express and declare by word or by authentic document in (mention house and place) within thirty days from the date of this notice, ten of which are assigned for the first, ten for the second and the remaining ten for the third summons, whether or not he (or she) wishes to embrace the holy catholic faith, and with a sincere heart receive holy baptism, as his (or her) consort has already done, and as she (or he) now earnestly asks him (or her) to do for the sake of his (or her) soul; and she (or he) further asks if he (or she) does not wish to embrace the true religion, whether he (or she) is willing peacefully to cohabit with the catholic consort without striving to pervert her (or him) or blaspheming the most holy name of Christ or despising the catholic religion. And if he (or she) refuses to be converted, and declares that he (or she) will not cohabit peacefully, the aforesaid

consort will proceed to another marriage with a catholic, or will enter religion (or take holy orders) as she (or he) shall deem best for the salvation of her (or his) soul. And let the aforesaid N. C. be cited and he is hereby considered cited at the expiration of the said thirty days to appear before this curia to hear judgment pronounced and any and every other necessary and opportune decree published in the premises. In testimony whereof &c. Given in the episcopal chancery of N— the — day of — A. D. —.

N. Vicar General.
N. N. Bishop's Chancellor."

If the infidel spouse cannot be found and the above citation cannot be served after all diligent efforts to find him have been used, an application for dispensation from the interpellation may be made to the Holy See. The bishops of Canada have this faculty in their extraordinary faculties, Form T.

236. Following are some forms for applying to a bishop for dispensations. Name of place and date should be at beginning of application.

"Most Reverend Bishop. Place and Date.

N. N. and N. N. of this parish of N—, through the undersigned their pastor, humbly beg a dispensation from all (two) publications of the banns of marriage. The reasons are: (give canonical reasons.) Having made diligent inquiry I find no impediment to their marriage, and I recommend granting their request. With much respect I remain,

Your Lordship's obedient servant,
N. Rector of N.

To Most Rev. N. N. Bishop of N."

237. Application for dispensation for a mixed marriage:

"Most Reverend Bishop. Place and Date.

N. N. a catholic of this parish of N— wishing to marry N. N. a non-catholic, through the undersigned, his (or her) pastor, humbly begs you, as delegate of the Holy See, to grant a dispensation from the impediment of disparity of worship (or mixed religion.) The reasons are: (give canonical reasons.) N. N. the non-catholic party who was never baptised (or baptised in ——sect) makes the necessary promises, as shown by the agreement sent herewith. I believe he (or she) will keep them and that there is no extraordinary danger of the perversion of the catholic petitioner. Unavailing efforts have been made to dissuade from the marriage. In the circumstances I recommend granting the dispensation. With much respect I remain,

Your Lordship's obedient servant,

N. Rector of N.

To Most Reverend N. N. Bishop of N."

Following is the form of agreement to be signed by the non-catholic party and forwarded with the application. If the non-catholic is a Jew it must be specially mentioned in the application; because except in urgent cases our bishops have no faculties for such dispensation. (*Cf. Extra: D. n. 3, in following chapter.*)

"Agreement to be signed by all non-catholic applicants for dispensation to contract marriage with members of the catholic church.

I, the undersigned, not a member of the catholic church wishing to contract marriage with —— a member of the catholic church, propose to do so with the understanding that the marriage bond thus contracted is indissoluable, except by death; and I promise on my word and honor, that —— shall be permitted the free exercise of religion according to

— belief, and that all children of either sex born of this marriage, shall be baptised and educated in the faith and according to the teachings of the Roman catholic church. I furthermore promise that no other marriage ceremony than that by the catholic priest shall take place. (Signature.)
Signed in the presence of——this — day of— 18."

238. Following is a form for application for dispensation from impediments of consanguinity. The same opening and closing phrases as above may be used:

"N. N. and N. N. of the parish of N— through the undersigned, their pastor, humbly beg Your Lordship as delegate of the Holy See, to grant them a dispensation from the impediment of consanguinity in the third (or other) degree collateral. The canonical reasons are: Having examined these reasons and finding them based on truth, I recommend granting the dispensation." To be signed by the rector.

239. Form of application in case of affinity:

"N. N. and N. N. of the parish of N — through the undersigned, their pastor, humbly beg Your Lordship, as delegate of the Holy See, to grant them a dispensation from the impediment of affinity in the (second) degree collateral, arising from marriage, N.'s first wife, now deceased, being a (cousin) of N. whom he wishes to marry. The canonical reasons are: Finding them based on truth I recommend that the dispensation be granted."

In case of affinity from illicit intercourse, fictitious names should be given in the application.

240. Form for applying for *sanatio in radice:*

"N. A. (fictitious) wishing to validate his (or her) marriage with N. B. (fictitious) through his (or her) confessor humbly begs Your Lordship, as delegate

of the Holy See, to grant a dispensation *in radice*, removing the impediment of [affinity in the first collateral degree ex copula illicita with the sister (or brother) of N. B.] which he (or she) concealed at the time of marriage with N. B. who is still ignorant of it. The reasons for *sanatio in radice* are scandal and danger of incontinence, if separation is imposed and the impossibility of obtaining N. B.'s renewal of consent without serious danger of present and future dissensions. N. Confessor."

241. FORMULÆ LATINÆ AD POSTULANDAS DISPENSATIONES.

Ad petendam dispensationem in impedimento publico, super quo, juxta facultates apostolicas, possit dispensare Episcopus:

—— die —— m. —— 18—.

"Illustrissime ac Reverendissime Domine.

Joannes A — et Anna B — de parochia (missione) N hujus diœcesis N — consanguinei in quarto (vel alio) gradu æquali in linea transversali, prout ex annexo schemate patet, matrimonium secum inire cupiunt, et ideo dispeasationem sibi necessariam ab Illustrissima ac Reverendissima Dominatione Vestra tanquam S. Sedis delegato, suppliciter efflagitant. Rationes snnt —— circumstantiæ sunt ——.

Summa, qua par est, reverentia et devotione permaneo,

Illustrissime ac Reverendissime Domine,

Illustrissimæ Dominationis Vestræ

Submissisimus,

N., *Parochus*."

Nota—A tergo folii, seu infra textum supplicis libelli, ponatur schema consanguinitatis vel affinitatis.

242. Ad petendam dispensationem in impedimento occulto, super quo juxta facultates vel de jure dispen-

sare possit Episcopus, et cujus dispensatio ab eo sine periculo lædendi sigilli peti valeat:

"Illustrissime, etc., ut supra 241.

Titius et Caja, vivente adhuc prima Titii conjuge, carnaliter se cognoverunt, et sibi fidem invicem dederunt de matrimonio inter se contrahendo, si uxor Titii præmoreretur; qua modo mortua, neutro tamen oratorum in ejus mortem machinante, matrimonium inter se contrahere desiderant. Cum autem impedimentum criminis ex adulterio et promissione proveniens sit occultum, et, nisi matrimonium inter eos contrahatur, periculum immineat scandalorum aut perseverantiæ in peccato, ideo ad hæc evitanda, et pro conscientiæ suæ quiete, supplicant humillime, ut Illustrissima Dominatio Vestra gratiam dispensationis sibi clementissime impertiri dignetur."

"Summa," etc., ut 241.

243. Ad petendam dispensationem ab Episcopo, matrimonio in bona fide cum impedimento de se publico jam contracto, et super quo, vi facultatum apostolicarum, Episcopus dispensare possit:

"Illustrissime, etc.

Exponitur humiliter Illustrissimæ Dominatione Vestræ pro parte devotorum oratorum Joannis A — et Annæ B — de parochia ——hujus diœcesis, quod ipsi, alias ignorantes aliquod impedimentum inter se existere, quominus possent invicem matrimonialiter copulari, matrimonium inter se per verba de præsenti, publice factis proclamationibus in eorum parochiali ecclesia, nulloque detecto neque denuntiato impedimento, contraxerunt, illudque in facie ecclesiæ solemnizarunt, et carnali copula consummarunt. Postmodum vero ad eorum pervenit notitiam, eos (prout ex annexo schemate patet) tertio et quarto a communi stipite provenientibus consanguinitatis gradibus invicem esse conjunctos, propter quod a carnali copula abstinuerunt (*vel*, et nihilominus in

eadem carnali copula perstiterunt.) Cum autem oratores prædicti in hujusmodi matrimonio remanere non possint absque dispensatione, et, si separatio inter eos fieret, gravia exinde scandala possent oriri, supplicant, ut, legis ecclesiasticæ venia eis clementissime data, matrimonium in facie ecclesiæ inire, et postmodum in eo libere et licite vivere valeant."

"Summa," etc. ut supra.

244. Ad petendam dispensationem ab Episcopo, matrimonio in mala fide cum impedimento publico jam contracto:

"Illustrissime," etc.

"Exponitur humiliter Illustrissimæ Dominationi Vestræ, nomine oratorum Joannis A — et Annæ B— de parochia N — hujus diœcesis N — quod ipsi, alias scientes se (ut ex annexo patet schemate) secundo consanguinitatis gradu a communi stipite æqualiter proveniente invicem esse conjunctos, dispensationem ab Illustrissima Dominatione Vestra (vel, ab Illustrissimo ac Reverendissimo Domino N—) ad valide inter se matrimonium contrahendum, dicto impedimento non obstante, postulaverunt; sed, repulsam passi, vesana obcœcati libidine ac circumventi diabolica fraude coram magistratu civili (vel, præcone hæretico) matrimonium incestuosum contraxerunt, ac consummaverunt, ex quo jam tres interea filii ab ipsis suscepti sunt. Nunc vero ex Dei gratia de periculo salutis æternæ valde timentes, magno ob anteactam vitam sunt commoti dolore. Cum autem, si separatio inter eos fieret, gravia exinde scandala orirentur, necnon magnum damnum emergeret liberis suis, in matrimonio vero remanere non possint absque dispensatione, supplicant, ut Illustrissima Vestra Dominatio cum ipsis dispensare dignetur ut in facie Ecclesiæ, omissis tamen publicis denuntiationibus, matrimonium invicem, consensu renovato, contrahere, ac in eo remanere libere et licite valeant; addito in-

super ex parte infra signati hoc motivo, quod, nisi dispensatio concedatur, valde timendum sit, ne oratores in fide omnino pervertantur, et ab ea deficiant, una cum filiis susceptis, cum inter acatholicos et infideles degant."

"Summa," etc.

245. Ad petendam dispensationem ab Episcopo in impedimento occulto, et quidem cum sanatione matrimonii in radice:

"Illustrissime," etc.

"Sempronia, diœcesis N— ignara impedimenti, in facie ecclesiæ et præmissis denuntiationibus, bona fide contraxit matrimonium cum viro, a cujus fratre vel filio) prius carnaliter fuerat cognita. Quare, cum absque scandalo separari non possint, et periculum incontinentiæ aut gravis diffamationis subsit, marito putativo impedimenti plane inscio, ac proinde consensus matrimonialis nequeat renovari absque gravi dissidiorum periculo, hinc supplicat humiliter pro celeri remedio dispensationis super hujuscemodi impedimento penitus occulto, ac quidem in radice matrimonii, ita ut, absque renovatione consensus, matrimonium sanari valeat." "Summa," etc.

246. Ad petendem dispensationem in impedimento publico, super qua non possit dispensare Episcopus.

Summatur Formula 241; sed:

1° Loco: "Illustrissime," etc. scribatur: "Beatissime Pater."

2° Loco: "ab Illustrissima," etc. scribe: "a Sanctitate Vestra."

3° Loco "Summa," etc. scribe: "Quam gratiam si Sanctitas Vestra benigne oratoribus elargiri dignetur, maximas pro ea gratias summa, qua par est, reverentia ac devotione aget

Sanctitati Vestræ,

Submissisimus,

Datum N—. N. N., etc."

Nota.—1° Si sint pauperes, post expositas rationes dicitur: "Pauperes et miserabiles existunt, atque ex suis labore et industria tantum vivunt.".

2° Supplicatio a parocho oratorum confecta ad Episcopum mittatur; Episcopus vero, vel loco ipsius Vicarius Generalis, eam testimonio, sigillo et chirographo episcopali munitam Romam mittet.

3° Si dispensatio a S. Sede petenda sit in matrimonio cum impedimento publico sive bona, sive mala fide *contracto*, sumatur Formula 243 vel 244, mutatis mutandis juxta ea, quæ in hac Formula 246 mutata sunt.

247. Ad petendam dispensationem a S. Pœnitentiaria in matrimonio contrahendo:

"Eminentissime Princeps.

Exponitur humillime Eminentiæ Vestræ, pro parte oratorum Titii et Cajæ, quod matrimonium contrahere intendant, sed quod Titius conjugatus Cajam, vivente adhuc propria uxore Sempronia, carnaliter cognoverit copula perfecta, sibique invicem fidem dederint de matrimonio inter se contrahendo, si Sempronia uxor Titii præmoreretur, quæ etiam per venenum a Titio propinatum præmortua est. Cum autum ex præmissis impedimentum criminis sit exortum, et exinde matrimonium nec licite, nec valide contrahere possint, supplicant oratores pro gratia dispensationis super isto impedimento criminis, ut publice matrimonium inter se contrahere, et in eo postmodum licite et libere remanere valeant, prolesque legitima decernatur. Impedimentum *omnino* occultum est, et urget periculum perseverantiæ in peccato, quin etiam scandali gravis, si matrimonio legitimo copulari nequeant. Quare pro quite conscientiæ suæ, de præmissis summe dolentes, Eminentiam Vestram humiliter supplicant, ut super his de opportuno remedio auctoritate Apostolica providere dignetur.

Purpuram deosculans, summa, etc. Eminentiæ Vestræ submissisimus—.

Dignetur Eminentia Vestra responsum dirigere ad me infra inscriptum,—"

248. Ad petendam dispensationem a S. Pœnitentiaria in matrimonio jam contracto:

"Eminentissime Princeps.

Titius conjugatus Cajam, vivente adhuc propria uxore Sempronia, carnaliter cognovit copula perfecta, sibique invicem fidem dederunt de matrimonio inter se contrahendo, si Sempronia uxor Titii præmoreretur, ac, postquam Sempronia per venenum a Titio propinatum præmortua esset, conscii (vel ignari) impedimenti in facie ecclesiæ præmissis (vel dispensatis) proclamationibus (coram magistratu civili, aut præcone hæretico) matrimonium contraxerunt et carnali copula consummarunt. (Si utraque vel alterutra pars, in bona fide adhucdum perseveret, id exprimatur; item utrum utraque vel alterutra pars, impedimenti conscia, nunc a copula abstineat, vel nihilominus in eadem perstiterit.) Quare cum impedimentum *omnino* occultum sit, et separatio sine scandalo fieri nequeat, Eminentiam Vestram humillime oro, ut dispensationem eis benigne indulgeat, quatenus valide contrahere possint.

"Purpuram," etc., ut in Form. 247.

249. Practically the same method is to be used in executing the general faculties, given in chapter VIII following, as for those granted by the Sacred Penitentiary. If therefore a matrimonial dispensation is asked, investigation will determine whether it can be granted by the bishop as delegate using his extraordinary faculties or whether recourse to Rome is necessary. Then it must be ascertained whether the applicant is a *subject* of the bishop, and living in

the diocese at the time of the execution of the dispensation (necessary in some cases) and whether there is a just cause for dispensation. Then whether the applicant is not laboring under censure, such as excommunication, which renders previous absolution necessary; whether a penance must not be imposed as required by Forms D and E. The same forms require a congruous alms to be imposed, which, however, may sometimes be condoned; whether there is not an occasion of sin or scandal to be avoided. All these matters should be understood, but regularly the only requirement for the bishop is the pastor's application giving an exact and truthful exposition of the case, since the Holy See exacts only that the exposition shall be true. The dispensation must be executed entirely gratuitously.

250. The bishop may grant the dispensations of Form I, since they are communicable, in the form of commission to the pastor, who will then by decree grant the dispensation just as a vicar general. When the parties apply directly to the bishop, if he does not know them he cannot well grant dispensation except by referring the petition for investigation.

"N. Episcopus N.— Revdo N— parocho in N. salutem in Domino. Oblatæ Nobis nuper pro parte devotorum oratorum Joannis A. et Mariæ B. diœcesis nostræ N— parochiæ N— petitionis series continebat; quod, cum (referuntur in extenso preces oratorum) dicta Maria B. dotem habens minus competentem, et vigesimum quartum annum et ultra ætatis suæ agens, virum paris conditionis non impeditum, cui nubere possit, non invenerit, et dictus orator dictam oratricem in uxorem ducere intendat, cupiunt oratores præfati invicem matrimonialiter copu-

lari; sed quia tertio et quarto a communi stipite provenientibus gradibus invicem conjuncti sunt, desiderium suum hac in parte adimplere non possunt absque dispensatione. Quare Nobis humiliter supplicari fecerunt, quatenus eisdem in præmissis de opportunæ dispensationis remedio ex benignitate nostra providere dignaremur. Nos igitur, qui specialem a SS. Domino nostro Leone Papa XIII, die— mense — anno — Nobis ad quinquennium generaliter concessam facultatem habemus tenoris sequentis; "dispensandi in 3° et 4° consanguinitatis et affinitatis gradu simplici et mixto tantum, et in 2°, 3° et 4° mixtis, non tamen in 2° solo quoad futura matrimonia; quoad vero ad præterita etiam in 2° solo, dummodo nullo modo attingat primum gradum, cum his qui ab heresi vel infidelitate convertuntur ad fidem catholicam et in præfatis casibus prolem susceptam declarandi legitimam," eosdem Joannem A. et Mariam B— et eorum quemlibet autoritate apostolica Nobis delegata a quibusvis excommunicationis interdicti aliisque ecclesiasticis sententiis, censuris et poenis a jure vel ab homine quavis occasione vel causa latis, si quibus quomodolibet innodati existant, ad effectum duntaxat præsentium consequendum, harum serie absolventes et absolutos fore censentes; ac certam de præmissis notitiam non habentes, hujusmodi supplicationibus inclinati, discretioni tuæ, de qua in his specialem in Domino fiduciam habemus, hisce auctoritate apostolica mandamus, quatenus deposita per te omni spe cujuscunque muneris aut præmii etiam sponte oblati, a quo te omnino abstinere monemus, te de præmissis diligenter informes; et si per informationem eandem preces veritate niti reperiris, super quo conscientiam tuam oneramus, tunc cum iisdem Joanne A. et Maria B. (dummodo illa propter hoc rapta non fuerit, aut si rapta fuerit, in potestate raptoris non amplius existat) ut, impedimento quarti et tertii consanguinitatis gradus hujusmodi ac constitutionibus et ordinationibus apostolicis,

ceterisque contrariis nequaquam obstantibus, matrimonium inter se publice servata forma Concilii Tridentini contrahere, illudque in facie ecclesiæ solemnizare et in eo postmodum remanere libere et licite valeant, dispenses apostolica auctoritate, quam in hoc generaliter delegatam habemus et tibi specialiter communicamus. In quorum fidem &c. Datum &c.

[L. S.] N. Episcopus N.

N. Cancellarius Episcopi."

251. In granting the dispensation himself the bishop may use the above form by droppiug the words after "ac certam informationem non habentes" and using instead:

"Capta de expositis diligenti informatione et reperta precum veritate, cum iisdem Joanne A— et Maria B— (dummodo illa propter hoc rapta non fuerit, aut si rapta fuerit in raptoris potestate non amplius existat) ut impedimento tertii et quarti consanguinitatis gradus non obstante, matrimonium inter se publice servata forma Conc. Trid. contrahere, illudque in facie ecclesiæ solemnizare et in eo postmodum remanere libere et licite valeant, præfata auctoritate apostolica harum litterarum serie dispensamus; distantiam vero tertii gradus prædicti eis non obstare declaramus; (addatur si necesse est) prolem susceptam, si qua sit et suscipiendam exinde legitimam nunciando. In quorum &c. Datum &c.

N. Episcopus. N.

N. Canc. Epis."

Following is another form for granting a dispensation in *foro externo:*

"N— Dei et Apostolicæ Sedis gratia Episcopus N—. Universis et singulis præsentes visuris, lecturis et audituris notum facimus, quod N— et N— humillime Nobis supplicaverint ut cum eis super impedimento tertii consanguinitatis gradus simplicis (vel alius)

quo impediti existunt, dispensare in ordine ad matrimonium legitime contrahendum clementissime dignaremur ob causas canonicas, nempe, (dentur causæ.) Nos igitur, qui a SS. Domino N. Leone Papa XIII speciali facultate delegata desuper, die — mensis — anno — ad quinquennium Nobis concessa muniti existimus, prout invenitur in Art. 6° Formæ I, (vel alias inserantur ipsa facultatis verba) vi delegatæ Nobis potestatis apostolicæ allegatæ dictos oratores a quibusvis sententiis, censuris et pœnis si innodati existant, ad effectum duntaxat præsentium consequendum absolventes, cum memoratis N— et N— ex causis præfatis Nobis cognitis et probatis, in Domino dispensamus et dispensatum declaramus, quo legitime matrimonium inter se, non obstante supradicto impedimento, servatis in reliquo de jure servandis, contrahere valeant. (Si dispensatio est ex formis D. vel E. addatur: "Insuper eadem auctoritate apostolica illis injungimus ut eleemosynam —— dollariorum ad econonum nostrum transmittant piis operibus applicandam.")

In quorum fidem præsentes litteras manu nostra signatas, sigilloque nostro munitas et per cancellarium nostrum subscriptas expediri jussimus.

Datum in ædibus nostris episcopalibus,———, die — mensis — anno Domini —.

[L. S.] N. Episcopus N.

N. Cancellarius Episc.

The omission of the words "juxta facultates ab Ap. Sede nobis imperitas" will not render the dispensation invalid. Still it is ordered to insert either the words of the faculty or at least that the dispensation is granted by apostolic delegation, giving date of faculties and of their expiration. (*S. Cong. Prop. 3, June, 1853.*) Dispensations granted by Apostolic indult must be signed by the bishop or the vicar general. The mere filling in of the bishop's

name by the chancellor is useless and clearly illegal. The seal should be affixed to every document of dispensation.

Following is a form for granting a dispensation *pro foro interno:*

"N. Dei &c Episcopus N.

Committitur confessario ex approbatis ab ordinario, per Titium (vel aliam personam) specialiter deligendo, potestas dispensandi circa impedimentum affinitatis (criminis &c) cum uxore (marito) sua contractæ ob præcedentem copulam cum sorore (fratre) ipsius habitam; in foro tamen conscientiæ tantum, ac dummodo impedimentum sit occultum. Injungatur vero pœnitentia gravis et salutaris. In quorum fidem &c. Datum &c.

[L. S.] N. Cancellarius Epis. N. Episcopus N."

The pastor or other executor may use the following form for executing the dispensation:

"Auctoritate apostolica vi indulti R$^{\underline{mo}}$ Episcopo (archiepiscopo) ad quinquennium a Sancta Sede concessi mihique ad hoc communicati, ego vos N. et N. (dummodo mulier rapta non fuerit aut si rapta fuerit in potestate raptoris non existat) absolvo ab omnibus censuris et pœnis ad effectum præsentium consequendum, atque dispenso super impedimento — ita ut legitime matrimonium contrahere, in eoque postmodum libere et licite remanere valeatis. Eadem auctoritate prolem susceptam, si qua sit, et suscipiendam legitimam declaro. In nomine Patris &c."

NOTE.—Where the decree "Tametsi" has been published it is certain that "The faculty to administer all sacraments not requiring episcopal order does not give also the faculty of assisting at the marriage of the faithful of the diocese." It is also certain, "That those marriages contracted before priests other than those delegated by the ordinary or licensed by the *parish priest* are not validly contracted." Decree of Holy Office, Sept. 7, 1898, in New Orleans Consultation.

The places in America where the "Tametsi" has been published are given below on page 494.

CHAPTER VIII.

FACULTATES QUÆ EPISCOPIS STATUUM FŒDERATORUM CONCEDI SOLENT.

FACULTATES ORDINARIÆ—FORM I.

252. 1. "Conferendi ordines extra tempora et non servatis interstitiis usque ad presbyteratum inclusive si sacerdotum necessitas ibi fuerit."

2. "Dispensandi in quibuscumque irregularitatibus, exceptis illis, quae vel ex bigamia vera, vel ex homicidio voluntario proveniunt; et in his etiam duobus casibus, si praecisa necessitas operariorum ibi fuerit, si tamen, quoad homicidium voluntarium, ex hujusmodi dispensatione scandalum non oriatur."

3. "Dispensandi super defectu aetatis unius anni ob operariorum penuriam, ut promoveri possint ad sacerdotium, si alias idonei fuerint."

4. "Dispensandi et commutandi vota simplicia in alia pia opera, et dispensandi ex rationabili causa in votis simplicibus castitatis et religionis." (intrandae.)

5. "Absolvendi et dispensandi in quacumque simonia; et in reali, dimissis beneficiis, et super fructibus male perceptis, injuncta aliqua eleemosyna vel poenitentia salutari arbitrio dispensantis, vel etiam retentis beneficiis, si fuerint parochialia et non sint qui parochiis praefici possint."

6. "Dispensandi in 3° et 4° consanguinitatis et affinitatis gradu simplici et mixto tantum, et in 2°, 3° et 4° mixtis, non tamen in 2° solo quoad futura matrimonia; quoad vero ad praeterita etiam in 2° solo, dummodo nullo modo attingat primum gradum, cum his qui ab haeresi vel infidelitate convertuntur ad Fidem Catholicam, et in praefatis casibus prolem susceptam declarandi legitimam."

7. "Dispensandi super impedimento publicae honestatis justis ex sponsalibus proveniente."

8. "Dispensandi super impedimento criminis, neutro tamen conjugum machinante et restituendi jus amissum petendi debitum."

9. "Dispensandi in impedimento cognationis spiritualis praeterquam inter levantem et levatum."

10. "Hae vero dispensationes matrimoniales videlicet 6ᵃ, 7ᵃ, 8 et 9ᵃ non concedantur, nisi cum clausula; *dummodo mulier rapta non fuerit, vel si rapta fuerit, in potestate raptoris non existat;* et in dispensatione tenor hujusmodi facultatem inseratur, cum expressione temporis ad quod fuerint concessae."

11. "Dispensandi cum gentilibus plures uxores habentibus, ut post conversionem et baptismum, quam ex illis maluerint, si etiam ipsa fidelis fiat, retinere possint, nisi prima voluerit converti."

12. "Conficiendi Olea Sacra cum sacerdotibus, quos potuerint habere, et, si necessitas urgeat, etiam extra diem Coenae Domini."

13. "Delegandi simplicibus sacerdotibus potestatem benedicendi paramenta et alia utensilia ad Sacrificium Missae necessaria, ubi non intervenit sacra unctio; et reconciliandi ecclesias pollutas aqua ab Episcopo benedicta, et in casu necessitatis, etiam aqua non benedicta ab Episcopo."

14. "Largiendi ter in anno indulgentiam plenariam contritis, confessis ac sacra communione refectis."

15. "Absolvendi ab haeresi et apostasia a fide et a schismate quoscumque etiam ecclesiasticos tam saeculares quam regulares; non tamen eos qui ex locis fuerint ubi Sanctum Officium exercetur nisi in locis missionum, in quibus impune grassantur haereses, deliquerint, nec illos qui judicialiter abjuraverint, nisi isti nati sint ubi impune grassantur haereses, et post judicialem abjurationem illuc reversi in haeresim fuerint relapsi, et hos in foro conscientiae tantum."

16. "Absolvendi ab omnibus censuris in Bulla '*Apostolicae Sedis moderationi,*' die 12 Oct. 1869, Romano Pontifici etiam speciali modo reservatis, excepta absolutione complicis in peccato turpi."

17. "Concedendi indulgentiam plenariam primo conversis ab haeresi atque etiam fidelibus quibuscumque in articulo mortis saltem contritis, si confiteri non poterunt."

18. "Concedendi indulgentiam plenariam in oratione 40 horarum ter in anno indicenda diebus episcopo bene visis, contritis et confessis et sacra communione refectis, si tamen ex concursu populi et expositione SSmi. Sacramenti nulla probabilis suspicio sit sacrilegii ab haereticis et infidelibus aut offensionis a magistratibus."

19. "Lucrandi sibi easdem indulgentias."

20. "Singulis feriis secundis non impeditis officio IX lectionum, vel eis impeditis, die immediate sequenti, celebrandi missam *de requie*, in quocumque altari, etiam portatili, et liberandi animas secundum eorum intentionem a purgotorii poenis per modum suffragii."

21. "Tenendi et legendi, non tamen aliis concedendi, praeter-

quam ad tempus tamen iis sacerdotibus, quos praecipue idoneos atque honestos esse sciat, libros prohibitos, exceptis operibus Dupuy, Volney, M. Reghellini, Pigault le Brun, De Potter, Bentham, J. A. Dulaure, Fetes et Courtisanes de la Grece, Novelle di Casti, et aliis operibus de obscoenis et contra Religionem ex professo tractantibus."

22. "Praeficiendi parochiis regulares, eisque suos deputandi vicarios in defectu saecularium, de consensu tamen suorum superiorum."

23. "Celebrandi bis in die, si necessitas urgeat, ita tamen ut in prima Missa non sumpserit ablutionem,—per unam horam ante auroram et aliam post meridiem,—sine ministro,—et sub dio et sub terra, in loco tamen decenti,— etiamsi altare sit fractum vel sine reliquiis sanctorum,—et praesentibus haereticis, schismaticis, infidelibus et excommunicatis,—si aliter celebrari non possit. Caveat vero, ne praedicta facultate seu dispensatione celebrandi bis in die aliter quam ex gravissimis causis et rarissime utatur, in quo graviter ipsius conscientia oneratur. Quod si hanc eandem facultatem alteri sacerdoti juxta potestatem inferius apponendam communicare, aut causa utendi alicui, qui a Sancta Sede hanc facultatem obtinuerit, approbare visum fuerit, serio ipsius conscientiae injungitur, ut paucis dumtaxat, iisque maturioris prudentiae ac zeli et qui absolute necessarii sunt, nec pro quolibet loco, sed ubi gravis necessitas tulerit, et ad breve tempus eamdem communicet aut respective causas approbet."

24. "Deferendi SSmum Sacramentum occulte ad infirmos sine lumine, illudque sine eodem retinendi pro eisdem infirmis, in loco tamen decenti, si ab haereticis aut infidelibus sit periculum sacrilegii."

25. "Induendi se vestibus saecularibus, si aliter vel transire ad loca eorum curae commissa vel in eis permanere non poterunt."

26. "Recitandi rosarium vel alias preces, si breviarium secum deferre non poterunt, vel divinum officium ob aliquod legitimum impedimentum recitare non valeant."

27. "Dispensandi, quando expedire videbitur, super esu carnium, ovorum et lacticiniorum tempore jejuniorum et Quadragesimae, non tamen per generale indultum sed in casibus particularibus."

28. "Praedictas facultates communicandi, non tamen illas, quae requirunt Ordinem Episcopalem, vel non sine Sacrorum Oleorum usu exercentur, sacerdotibus idoneis qui in eorum dioecesibus laborabunt, et praesertim tempore sui obitus, ut, sede vacante, sit qui possit supplere, donec Sedes Apostolica certior facta, quod quam primum fieri debebit, per delegatos vel per unum ex iis alio

modo provideat, quibus delegatis auctoritate Apostolica facultas conceditur, sede vacante et in casu necessitatis, consecrandi calices, patenas et altaria portatilia Sacris Oleis, ab Episcopo tamen benedictis."

29. "Et praedictae facultates gratis et sine ulla mercede exerceantur et ad quinquennium tantum concessae intelligantur, nec illis uti possit extra fines suae dioecesis."

FACULTATES EXTRAORDINARIÆ C.

253. 1. "Recitandi privatim, legitima concurrente causa, matutinum cum laudibus diei sequentis statim elapsis duabus horis post meridiem eamdemque facultatem ecclesiasticis viris sive saecularibus, sive regularibus communicandi."

2. "Retinendi ac legendi libros ab Apostolica Sede prohibitos, etiam contra Religionem ex professo agentes, ad effectum eos impugnandi; quos tamen diligenter custodiat ne ad aliorum manus perveniant, exceptis astrologicis, judiciariis, superstitiosis ac obscoenis ex professo; eamdemque facultatem etiam aliis concedendi, parce tamen et dummodo prudentur praesumere possit nullum eos ex hujusmodi lectione detrimentum esse passuros."

3. "Dispensandi cum Diaconis utriusque cleri super defectu aetatis quatuordecim mensium, ut promoveri possint ad Sacerdotium, si alias idonei fuerint."

4. "Permittendi *parochis* sibi subjectis, dummodo justa et legitima causa concurrat, ut iis diebus festis, quibus fideles Apostolica auctoritate soluti sunt ab obligatione missam audiendi, ipsi ab applicatione pro populo abstinere valeant, dummodo pro eodem populo in ejusmodi missa specialiter orent."

5. "Permittendi Catholicis sibi subjectis, ut feriis sextis, sabbatis, aliisque diebus, quibus carnium esus vetatur, acatholicis, si in eorum mensa esse contigerit, carnes praebere valeant, dummodo tamen absit ecclesiasticae legis contemptus et ejusmodi facultate sobrie multaque circumspectione utantur, ne scandalum in Catholicos vel heterodoxos ingeratur."

6. "Deputandi aliquem sacerdotem in locis sibi subjectis cum facultate consecrandi juxta formam in Pontificali Romano praescriptam calices, patenas et altarium lapides, adhibitis tamen Sacris Oleis ab Episcopo Catholico benedictis."

7. "Impertiendi quater in anno intra fines suae dioecesis in solemnioribus festis Benedictionem Papalem, juxta formulam typis impressam atque insertam, cum indulgentia plenaria ab iis lucranda, qui vere poenitentes, confessi ac Sacra Communione refecti eidem Benedictioni interfuerint, Deumque pro Sanctae Fidei propagatione et S. R. E. exaltatione oraverint."

8. "Declarandi privilegiatum in qualibet ecclesia suae dioecesis unum altare, dummodo aliud privilegiatum non adsit, pro cunctis Missae Sacrificiis, quae in eodem altari celebrabuntur a quocunque presbytero saeculari vel cujuvis ordinis regulari."

9. "Benedicendi coronas precatorias, cruces, et sacra numismata, iisque applicandi indulgentias juxta folium typis impressum atque insertum, necnon erigendi Confraternitates B. M. V. de Monte Carmelo, SS^{mi} Rosarii et Bonae Mortis cum applicatione omnium indulgentiarum et privilegiorum, quae Summi Pontifices iisdem Confraternitatibus impertiti sunt; addita insuper potestate has facultates communicandi presbyteris sacro ministerio fungentibus."

10. "Erigendi in locis suae dioecesis, in quibus non adsint PP. Franciscales, pium exercitium Viae Crucis cum applicatione omnium indulgentiarum et privilegiorum, quae Summi Pontifices ejusmodi exercitium peragentibus impertiti sunt, addita insuper potestate hanc facultatem communicandi presbyteris sacro ministerio fungentibus."

11. "Promovendi Clericos sibi subditos ad Subdiaconatum aliosque Ordines Majores usque ad Presbyteratum inclusive titulo missionis, praestito tamen ab eisdem Clericis juramento antequam Subdiaconi ordinentur, quo spondeant, ad instar Pontificiorum alumnorum, suae dioecesi vel missioni se esse perpetuo inservituros."

12. "Delegandi benedictionem campanarum, quandocumque eam ipsi absque gravi incommodo perficere nequeant, sacerdotibus sibi bene visis, servato ritu Pontificalis Romani, atque adhibitis Oleis et aqua ab Episcopo benedictis; necnon sine aqua ab Episcopo benedicta, si gravis causa concurrat."

13. "Et praedictae facultates gratis et sine ulla mercede excerceantur, nec illis uti possit extra fines suae dioecesis."

FACULTATES EXTRAORDINARIÆ D.

254. 1. "Dispensandi super impedimento cognationis spiritualis inter levantem et levatum."

2. "Dispensandi in casibus occultis et in foro conscientiae tantum super primo et secundo gradu simplici et mixto affinitatis ex copula illicita provenientis, in linea sive collaterali sive etiam recta, dummodo, si de linea recta agatur, nullum subsit dubium quod conjux possit esse proles ab altero contrahentium genita, tam in matrimoniis scienter vel ignoranter contractis quam in contrahendis."

3. "Dispensandi *cum suis subditis*, super impedimento disparitatis cultus, quatenus sine contumelia Creatoris fieri possit, et dummodo cautum omnino sit conditionibus ab Ecclesia praescriptis ac praesertim de amovendo a Catholico conjuge perversionis periculo, deque conversione conjugis infidelis pro viribus curanda, ac de universa prole utriusque sexus in Catholicae Religionis sanctitate omnino educanda; servata in reliquis adjecta instructione typis impressa; excepto tamen casu matrimonii cum viro vel muliere judaeis nisi adsit periculum in mora; tum vero singulis trienniis referat quot in casibus dispensaverit."

4. "Dispensandi *cum suis subditis*, super impedimento impediente mixtae Religionis, dummodo cautum omnino sit conditionibus ab Ecclesia praescriptis prout in superiori No. 3."

5. "Dispensandi in matrimoniis mixtis jam contractis, non item in contrahendis, super gradibus consanguinitatis et affinitatis, super quibus Apostolicam facultatem pro Catholicis jam obtinuit, quatenus pars Catholica, praevia absolutione ab incestus reatu et censuris, cum parte acatholica rite et legitime matrimonium contrahere de novo possit, prolemque susceptam ac suscipiendam legitimam declarandi dummodo cautum omnino sit conditionibus ab Ecclesia praescriptis prout in sup. No. 3."

6. "Sanandi in radice matrimonia contracta, quando comperitur adfuisse impedimentum dirimens super quo ex Apostolicae Sedis indulto dispensare ipse possit, magnumque fore incommodum requirendi a parte innoxia renovationem consensus, monita tamen parte conscia impedimenti de effectu hujus sanationis."

7. "Absolvendi contrahentes in omnibus et singulis casibus supra expositis, dummodo opus sit, ab incestus reatibus et censuris, imposita pro modo culparum congrua poenitentia salutari, prolemque susceptam ac suscipiendam legitimam declarandi."

8. "Subdelegandi praesentes facultates suo Vicario Generali, quoties absit a residentia vel legitime sit impeditus, atque duobus vel tribus presbyteris sibi benevisis in locis remotioribus propriae dioecesis, pro aliquo tamen numero casuum urgentiorum, in quibus recursus ad ipsum haberi non possit."

"Voluit autem Sanctitas Sua et omnino praecepit ut praedictus Episcopus superioribus facultatibus justis dumtaxat gravibusque accedentibus causis et gratis utatur, injuncta tamen aliqua congrua eleemosyna, in pium opus arbitrio ipsius Episcopi eroganda, atque ut, elapso quinquennio de singulis dispensationibus concessis certiorare debeat Apostolicam Sedem."

FACULTATES EXTRAORDINARIÆ E.

255. "Dispensandi in utroque foro cum Catholicis ejus jurisdic-

tioni subjectis, in matrimoniis sive contractis sive contrahendis, super sequentibus impedimentis:"

1. "Super impedimento primi gradus affinitatis in linea collaterali ex copula licita provenientis."

2. "Super impedimento secundi gradus consanguinitatis vel affinitatis admixti cum primo in linea transversali."

3. "Super impedimento secundi gradus consanguinitatis vel affinitatis in linea transversali aequali."

4. "Super impedimento publico primi gradus affinitatis, ex copula illicita provenientis, in linea sive collaterali sive etiam recta, dummodo si de linea recta agatur, nullum subsit dubium quod conjux sit proles ab altero contrahentium genita."

"Insuper Sanctitas Sua praedicto Episcopo facultatem concessit in omnibus et singulis casibus superius expositis absolvendi contrahentes, dummodo opus sit, ab incestus reatibus et censuris, imposita pro modo culparum congrua poenitentia salutari ac prolem tam susceptam quam suscipiendam legitimam declarandi."

"Voluit autem eadem Sanctitas Sua ac omnino praecepit, ut praedictus Episcopus iisdem facultatibus urgentissimis dumtaxat concurrentibus causis et gratis utatur, injuncta tamen aliqua eleemosyna in pium opus arbitrio ipsius Episcopi eroganda."

"Tandem SSmus Pater eidem Episcopo potestatem fecit praedictas facultates subdelegandi suo Vicario Generali quoties a propria residentia absit vel sit legitime impeditus, atque duobus vel tribus presbyteris sibi bene visis in locis remotioribus propriae dioecesis, pro aliquo tamen numero casuum urgentiorum, in quibus recursus ad ipsum haberi non possit."

QUADRUPLICIS IGITUR GENERIS SUNT FACULTATES, QUÆ EPISCOPIS NOSTRIS CONCEDI SOLENT.

256. *Facultates Ordinariae*, dictae *Formulae* I, quae a caeteris distinguuntur quod, 1° omnes, et consequenter etiam *illae* dispensationes matrimoniales, quae vi earum conceduntur, *gratis* exercendae sint; 2° Episcopi eas communicare *possint* omnibus *indiscriminatim* "sacerdotibus idoneis, qui in eorum dioecesibus laborabunt," exceptis tamen, "quae requirunt Ordinem Episcopalem, vel non sine Sacrorum Oleorum usu exercentur" et facultate celebrandi bis in die, quam "paucis dumtaxat —— et qui absolute necessarii sint" subdelegare valent.

Facultates Extraordinariae, dictae C. Has quoque Episcopi communicare *possunt* omnibus *indiscriminatim* sacerdotibus in eorum dioecesi laborantibus, exceptis sequentibus: 1° "Consecrandi calices, patenas et altarium lapides —— Sacris Oleis ab

Episcopo Catholico benedictis, quam ad actum tantum, aut uni alterive sacerdoti in locis sibi subjectis delegare valent. 2º Impertiendi quater in anno in solemnioribus festis Benedictionem Papalem. 3º "Declarandi privilegiatum in qualibet ecclesia suae dioecisis unum altare, dummodo aliud privilegiatum non adsit." 4º Benedicendi campanas, nisi quando "ipsi absque gravi incommodo" eum actum perficere non valent, et tunc "servato ritu Pontificalis Ramani, atque adhibitis Oleis et aqua ab Episcopo benedictis, necnon sine aqua ab Episcopo benedicta, si gravis causa concurrat."

Facultates Extraordinariae, dictae D. Hae 1º Omnes ad dispensationes matrimoniales pertinent. 2º Subdelegari possunt soli "Vicario Generali," dummodo Episcopi "a propria residentia absint vel legitime sint impediti, atque duobus vel tribus presbyteris sibi benevisis in locis remotioribus propriae dioecesis, pro aliquo tamen numero casuum urgentiorum in quibus recursus ad ipsos haberi non possit." 3º Justis dumtaxat *gravibusque* accedentibus causis "exercendae sunt, ac licet gratis." 4º "Injuncta tamen aliqua congrua eleemosyna, in pium opus arbitrio ipsius Episcopi eroganda." 5º "Elapso quinquennio" (ad quod concedi solent) "de singulis dispensationibus certiorare" debent Episcopi "Apostolicam Sedem."

Facultates Extraordinariae, dictae E. Hae quoque, 1º Omnes ad dispensationes matrimoniales pertinent. 2º Iis tantum subdelegari valent quibus Facultates Extraordinariae D. 3º *Urgentissimae* requiruntur causae. 4º Servanda sunt, quae servanda pracipiuntur supra 4º quoad Facultates Extraordinarias D.

NOTA.—In matrimoniis mixtis, infidelis, seu persona non-baptisata, non est *subditus* episcopi; ideoque non illi sed parti Catholicae dispensatio est concedenda, praesertim si diversas incolant dioeceses.

"DE TRANSITU AD SUCCESSORES FACULTATUM SPECIALIUM HABITUALITER A SANCTA SEDE ORDINARIIS CONCESSARUM, PRO TEMPORE ET IN TERMINIS CONCESSIONIS.

Feria IV, 24 *Novembris*, 1897.

In Cong. Gen. S. Rom. Univ. Inquis. habita ab Emis ac Rmis DD. Card. in rebus fidei et morum Gen. Inquisitoribus iidem Emi Patres, rerum temporumque adjunctis mature perpensis, decernendum censuerunt: Supplicandum SSmo, ut declarare seu statuere dignetur facultates omnes speciales habitualiter a S. Sede Episcopis aliorumque locorum Ordinariis concessas non suspendi vel desinere ob eorum mortem vel a munere cessationem,

sed ad successores Ordinarios transire ad forman et in terminis decreti a sup. hac Cong. editi die 20 Februarii, 1888, quoad dispensationes matrimoniales.

Insequenti vero feria VI, die 26 Novembris, 1897, in solita audientia R. P. D. Adsessori S. O. impertita, facta de his omnibus SSmo D. N. Leoni Div. Prov. Pp. XIII relatione, Sanctitas Sua Emorum Patrum resolutionem adprobavit, atque ita perpetuis futuris temporibus servandum mandavit, contrariis non obstantibus quibuscumque.

[L. S.] IOS. *Can.* MANCINI, *S. R. et U. I. Notarius.*"

Die 20 Aprilis, 1898, clausula "durante munere" suppressa est, et innovata est declaratio: 1° Facultates omnes habituales in posterum committendas esse Ordinariis locorum. 2° Appellatione Ordinariorum venire Episcopos, administratores seu vicarios apostolicos, praelatos seu praefectos habentes jurisdictionem cum territorio separato, eorumque officiales seu vicarios in spiritualibus generales, et sede vacante vicarium capitularem vel legitimum administratorem. Die vero 23 Junii, 1898, declaratio circa facultates concedendas extensa est ad facultates jam antecedenter concessas.

Facultates *habitualiter* concessae, sunt: Forma I, Extraordinariae C, D, E, pro Statibus Foederatis. Aliae sunt formae pro aliis regionibus.

CHAPTER IX.

APOSTOLIC CONSTITUTION OF POPE LEO XIII ON THE PROHIBITION AND CENSURE OF BOOKS.

257. "The head and sum of the duties and offices which must be most diligently and sacredly observed in this apostolic dignity is assiduously to watch, and with fullest strength to strive that the integrity of christian faith and morals suffer no loss. And that, more than at any other, is especially necessary at this time, when, through the unbridled license of men's minds and hearts, almost every doctrine which the savior of men, Jesus Christ, delivered to the keeping of his church for the salvation of the human race is daily called into question and endangered. In this strife against Christ certainly varied and innumerable are the crafty and ingenious arts of his enemies; but full of danger above all others is that of intemperate writing and publishing broadcast what is written. For nothing more dangerous could be imagined to corrupt men's minds through contempt of religion and their hearts through incentives to sin. Wherefore the church, the guardian and the mediator set to preserve faith and morals, fearing such great ill, very early understood that she must take some remedy against this plague; and for this end, as far as she could, has always striven to safeguard men against this terrible poison, reading bad

books. The days nearest to her founding saw the vehement zeal of Blessed Paul in this matter, and so, likewise, has every following age witnessed the vigilance of the holy fathers, the ordinances of bishops and the decrees of councils. And especially it is testified by documentary records how vigilantly the Roman Pontiffs have guarded against heretical writings creeping in, to the injury of the public. Anastasius I, by solemn edict condemned the more dangerous writings of Origen; Innocent I, those of Pelagius, and Leo the Great all the books by the Manicheans. Well known in this connection are the decretal letters which Gelasius opportunely issued regarding the books which might and might not be accepted. And so likewise, as time went on, did the sentence of the Apostolic See pin down as erroneous the pestilent books of the Monothelites, of Abelard, of Massilius of Padua, of Wickliff, and of Huss. But in the fifteenth century, when the art of printing had been discovered, not only was attention directed against those evil books which had already seen the light, but precautions were taken against the issue of such books in future. And, indeed, at that period this foresight was required not from any light motive, but for the very protection of virtue and public safety; for not only too many people had immediately turned aside an art in itself most excellent, the source of the greatest blessings, and calculated to further the social well-being of the christian world, into a great weapon for ruin; but the already great evil of wicked writings was made greater and more rapid by the ease with which they could be spread abroad. Therefore in their most

salutary wisdom did our predecessors, both Alexander VI and Leo X decree certain enactments, befitting the moral requirements of their time, for the purpose of restraining within bounds the publishers of those days.

258. But soon the wind became a whirlwind, and it was necessary to repress the pestilence of these wicked heresies with more vigilant sternness. So the same Leo X, and afterwards Clement VII, most forcibly decreed it to be unlawful to read or to possess the works of Luther. But when, to the misery of that age, the impure swill of these pernicious books had beyond bounds increased and crept into every place, there seemed to be need of a remedy fuller and more promptly efficacious. And this remedy our predecessor, Paul IV, at once provided by issuing a list of books and writings against which the faithful were warned. And soon after, the Fathers of the council of Trent labored to restrain the increasing license in reading and writing by a new decree. It was their will and enactment that authorities and theologians should be chosen for the duty not alone of increasing and perfecting the Index which Paul IV had issued, but of framing rules to serve as a guide for publishers, readers and users of these books; and to these rules Paul IV gave the force of his apostolic recognition.

259. But the very reason of the public welfare, which in the beginning had begotten the Tridentine regulations, made changes necessary in them as time went on. And the Roman Pontiffs, Clement VIII, Alexander VII and Benedict XIV, prudently mind-

ful of the needs of the times, made several decrees to develop them and adapt them to the day.

Now, these things clearly show that the principal anxiety of the Roman Pontiffs has ever been to ward off that twin pest and ruin of communities—errors in opinion and depravity in morals—from the civil and social life of men. Nor did energy fail to be fruitful so long as in this, the administration of public affairs, God's eternal law expressed its right to order and forbid, and the governors of commonwealths worked in unison with ecclesiastical authority. Everyone knows what followed. When time had gradually changed the aspect of affairs and man's environment, the church, as is her wont, prudently took such steps as seemed most useful and expedient to the common weal. Several of the ordinances of the Rules of the Index, which seemed no longer opportune, she either removed by decree, or, with a kindliness equalled by its foresight, permitted to be regarded as obsolete, in view of the strength of custom and use around her. In quite recent times Pius IX, from his pontifical pre-eminence, sent letters to archbishops and bishops in partial mitigation of Rule X. And as the Vatican council drew near he gave the duty to some learned men, chosen to prepare arguments, to weigh out and appreciate all the Index rules and to appraise what should be done with them. They unanimously decided that they ought to be changed and several of the Fathers openly professsd their agreement with this decision and asked the council to ratify it. On this point letters are extant from French bishops expressing the opinion that it was necessary and too urgent to be delayed "to put

the rules and the whole Index upon a basis better adapted to the age and easier to observe." And the same opinion was held by the German bishops, who asked that the "Rules of the Index . . . should be submitted to a new revision and be edited afresh." And many bishops from Italy and the other countries were of the same mind. And these all, if we keep in view the state of the times, of civil enactments, of popular usages, make a just request, and one in accord with the maternal charity of holy church. For in the rapid march of minds there is no field of knowledge in which literature does not too boldly wander; whence comes the daily glut of pestilent books. And what is sadder still is that amid this great evil the public laws are not only conniving, but allowing great license. Hence, on the one hand, the minds of so many are loosed from religion, and on the other such perfect impunity of reading without restraint whatever issues from the press. Wherefore, bent on remedying these troubles, We have considered two things feasible, from which all may gather a certain and clear rule of action in this matter. First, that the Index of books unfit to be read should be most diligently re-examined, and, when this is done, should be published. Secondly, We have considered the rules and have decreed, while preserving them in substance, to make them easier, so that anyone, unless he be of evil mind, will not find it hard or troublesome to obey them. In this not only are We following the example of our predecessors, but We are imitating the maternal zeal of the church, which desires nothing so deeply as to show herself kind, and has so watched over and

still watches over her ailing children that she may with zealous love be sparing to their weakness.

260. Whence, after mature consideration with the cardinals of holy church who belong to the Sacred Council of the Index, We have decided to issue the general decrees which are written below and are conjoined with this constitution; which rules alone are to be used by the said sacred council, and to be religiously obeyed by catholics throughout the world. We wish that these alone be regarded as law and We abrogate the rules issued by order of the holy council of Trent, the observations, instructions, decrees and monitions, and whatever else has been decreed and ordered on this matter by our predecessors, excepting alone the constitution "Sollicita et Provida" of Benedict XIV, which We decide to leave in force, as it now is in force.

Section I—The Prohibition of Books.

CHAPTER I.

THE FORBIDDEN BOOKS OF APOSTATES, HERETICS, SCHISMATICS AND OTHER WRITERS.

261. 1. All books which were condemned before the year 1600 by the Supreme Pontiffs or by œcumenical councils, and which are not enumerated in this new Index, must be considered condemned as before, with those exceptions which are permitted by these general decrees.

2. Books of apostates, heretics, schismatics and all other writers which defend heresy or schism, or in any way tend to overthrow the basis of religion, are absolutely forbidden.

3. Likewise are forbidden books of non-catholics which professedly treat of religion, unless it is known

that they contain nothing contrary to catholic faith.

4. Books of those authors who do not professedly treat of religion, but merely in passing touch on truths of faith, are not to be considered forbidden by ecclesiastical law until they are proscribed by special decree.

CHAPTER II.

THE EDITIONS OF THE ORIGINAL TEXTS OF HOLY SCRIPTURE AND OF VERSIONS NOT IN THE VULGAR TONGUE.

262. 5. Editions of the original text and of ancient catholic versions of sacred scripture, even of the oriental church, published by any non-catholics, even though apparently edited faithfully and integrally, are allowed to those only who are engaged in theological or biblical studies, provided, however, no attack be made, in the prefaces or notes, on dogmas of the catholic faith.

6. In the same way and under the same conditions are allowed other versions of the holy bible edited by non-catholics, whether in Latin or any other classic language.

CHAPTER III.

VERSIONS OF HOLY SCRIPTURE IN THE VERNACULAR.

263. 7. Since experience has proved that, on account of man's boldness, more evil than good arises if the sacred books are allowed to all without check in the vulgar tongue; therefore all versions in the vernacular, even though made by catholics, are entirely forbidden unless approved by the Holy See or issued under the care of bishops, with notes taken from learned catholic writers.

8. Prohibited are all versions of the holy scriptures made by whatever non-catholic writers in whatever

vulgar tongue, and those especially which are spread broadcast by bible societies, again and again condemned by the Roman Pontiffs, since they entirely discard the most salutary laws of the church relative to the issuing of the divine books. But these versions are allowed to those who are engaged in theological or biblical studies on observing the regulations set forth above in No. 5.

CHAPTER IV.

INDECENT BOOKS.

264. 9. Books which professedly treat on, narrate, or teach lasciviousness or obscenity—for here the question is not one of faith merely, but of morals, which are easily corrupted by the reading of such books—are absolutely prohibited.

10. Books, whether they be of authors ancient or modern, belonging to what are called the classics, if infected by this taint of turpitude, are, on account of their elegance and propriety of language, permitted to those only whose station or teaching office affords a reason; but on no account, unless expurgated with exceeding care, must they be given to or read before boys and youths.

CHAPTER V.

SOME BOOKS OF A PARTICULAR KIND.

265. 11. Books detracting from the reverence due to God, the Blessed Virgin, the saints, the church and its worship, the sacraments or the Apostolic See, are condemned. Under the same prohibition come those works in which the idea of the inspiration of holy scripture is perverted or its extension too strictly limited. Books in which the ecclesiastical

hierarchy or the clerical or religious state is deliberately assailed with opprobrium are likewise forbidden.

12. It must be held as unlawful to publish, read or keep books in which fortune telling, divination, magic, the summoning of spirits and other such superstitions are taught or recommended.

13. Books or writings which tell of new apparitions, revelations, visions, prophecies and miracles, or which introduce new devotions, even under the pretext that they are private, are proscribed if they are published without due permission from ecclesiastical superiors.

14. In like manner are prohibited books which uphold the lawfulness of the duel, suicide or divorce, which treat of the masonic sects and other societies of that kind, and maintain that these are not baneful, but useful to the church and civil society, and which defend errors proscribed by the Holy See.

CHAPTER VI.

SACRED PICTURES AND INDULGENCIES.

266. 15. Pictures, however printed, of our Lord Jesus Christ, the Blessed Virgin Mary, the angels and saints, or other servants of God, which are not in conformity with the sense and decrees of the church, are absolutely forbidden. New ones, whether prayers be attached or not, are not to be published without the permission of the ecclesiastical authority.

16. All persons are interdicted from publishing in any way indulgencies which are apocryphal and have been condemned or recalled by the Holy Apostolic

See. Those that have been already published are to be withdrawn from the faithful.

17. All books, epitomes, pamphlets, leaflets, etc., recording grants of indulgencies are not to be published without license from competent authority.

CHAPTER VII.

LITURGICAL BOOKS AND PRAYER-BOOKS.

267. 18. Let no one take upon himself to make any alteration in authentic editions of the Missal, the Breviary, the Ritual, the Ceremoniale Episcoporum, the Roman Pontifical, and other liturgical books approved by the Holy Apostolic See; in case this has been done, the new editions are prohibited.

19. No litanies except the most ancient and the ordinary ones, which are contained in the Breviaries, Missals, the Pontificals and the Rituals, the Litanies of the Blessed Virgin which are usually sung in the Holy House of Loretto, and the Litanies of the Holy Name of Jesus already approved by the Holy See, are to be published without the revision and approbation of the Ordinary.

20. Let no one, without license from legitimate authority, publish books or pamphlets of prayers, devotion, or religious, moral, ascetic and mystic doctrine and teaching, or other books of this kind, even though they may appear calculated to promote the piety of christians; otherwise they are to be deemed prohibited.

CHAPTER VIII.

JOURNALS, LEAFLETS AND PERIODICALS.

268. 21. Journals, leaflets and periodical publications which of set purpose attack religion and moral-

ity are to be regarded as proscribed not only by natural but also by ecclesiastical law.

And when necessary let the ordinaries take care to warn the faithful opportunely with regard to the danger of such reading and the injury it causes.

22. Let no catholic, especially no ecclesiastic, publish anything in journals, leaflets or periodical publications of this kind, except for a just and reasonable cause.

CHAPTER IX.

THE PERMISSION TO READ AND KEEP PROHIBITED BOOKS.

269. 23. Books condemned by special decrees or by these General Decrees can be read and kept only by such as have received due authorization from the Holy See or from those to whom it has delegated the requisite power.

24. The Roman Pontiff set up the Sacred Congregation of the Index to grant licenses for reading and keeping whatsoever books are prohibited. But both the Supreme Congregation of the Holy Office and the Sacred Congregation of the Propaganda Fide possess the same power for the regions subject to their jurisdiction. This authority belongs likewise to the Master of the Sacred Apostolic Palace, but merely for the city.

25. Bishops and other prelates holding quasi-episcopal jurisdiction can grant a license for single books, and only in urgent cases. And if they shall have obtained from the Apostolic See the general power of granting the faithful a license to read and keep prohibited books, let them give it only in chosen cases and for good and reasonable cause.

26. All who have obtained apostolic authorization

to read and keep prohibited books are not thereby empowered to read and keep any books whatsoever or journals proscribed by the local ordinaries, unless the power of reading and keeping books by whomsoever condemned be expressly given to them in the apostolic indult. Moreover, they who have procured a license to read prohibited books must remember that they are bound by a grave precept to guard such books so that they may not fall into the hands of others.

CHAPTER X.

THE DENUNCIATION OF BAD BOOKS.

270. 27. Although it is the duty of all catholics, particularly of those eminent in learning, to denounce bad books to the bishops or the Apostolic See, still this duty belongs by a special title to nuncios, delegates apostolic, local ordinaries, and rectors of universities which are notable as seats of learning.

28. It will be well when denouncing bad books not only to indicate the title, but, also, as far as it can be done, to explain the reasons for which the book is thought deserving of censure. And for those to whom the denunciation is addressed it will be a sacred duty to keep secret the names of the denouncers.

29. Let ordinaries also, as delegates of the Apostolic See, endeavor to proscribe and take out of the hands of the faithful bad books and other pernicious writings published or circulated in their dioceses. Let them submit to the apostolic judgment those works or writings which require a closer examination or for which in order to insure a salutary effect,

the decision of the highest authority may appear to be needed.

Section II.—The Censorship of Books.

CHAPTER I.

THE AUTHORITIES WHO HAVE CHARGE OF THE CENSORSHIP OF BOOKS.

271. 30. From what has been laid down above (No. 7) it is clear with whom lies the power of approving or permitting editions and versions of the sacred scriptures.

31. Let no one dare again to publish books which have been forbidden by the Apostolic See; should an exception appear admissable in any particular case for a grave and reasonable cause, it is never to be made until a license has first been obtained from the Sacred Congregation of the Index and the conditions prescribed by it have been observed.

32. Whatever pertains in any way to the causes of beatification and canonization of the servants of God cannot be published without the sanction of the Sacred Congregation of Rites.

33. The same is to be said of the collections of the decrees of the different Roman congregations; that is to say, these collections cannot be published unless license has previously been obtained and the conditions laid down by the directors of each congregation have been observed.

34. Vicars apostolic and missionaries apostolic are to observe faithfully the decrees of the Sacred Congregation of Propaganda with regard to the publishing of books.

35. The approbation of books, the censorship of which is not reserved by the present decrees to the

Holy See or the Roman congregations is a matter appertaining to the ordinary of the place at which they are published.

36. Regulars are to remember that, in addition to the license from the bishop, they are bound by a decree of the sacred council of Trent to obtain authorization for the publication of a book from the superior to whom they are subject. And such permission is to be printed at the beginning or the end of the work.

37. If an author living in Rome wishes to publish a book elsewhere than in the city, no other approbation is required but that of the Cardinal Vicar of the city and the Master of the Sacred Apostolic Palace.

CHAPTER II.

THE DUTY OF CENSORS IN THE EXAMINATION OF BOOKS BEFORE PUBLICATION.

272. 38. Let bishops to whose office it belongs to grant authority to print books take care to entrust the examination of them to men of approved piety and learning, upon whose faith and integrity they can rely, confident that they will not be influenced by favor or ill-will, and that all human considerations will be put aside.

39. The censors are to recognize that of the various opinions and views (according to the injunction of Benedict XIV) they must judge with a mind free from all prejudices. They must, therefore, discard affection for any particular nation, family, school, or institution, and put away from them party zeal. Let them keep before them the dogmas of holy church and the common teaching of catholics which are contained in the decrees of the general councils,

the constitutions of the Roman Pontiffs, and the consensus of the doctors of the church.

40. On the completion of the examination, if there appears to be nothing against the publication of the book, let the ordinary give the author in writing and entirely gratis, permission for its publication to be printed at the beginning or the end of the work.

CHAPTER III.

BOOKS TO BE SUBMITTED TO CENSORSHIP BEFORE PUBLICATION.

273. 41. All the faithful are bound to submit to ecclesiastical censorship before publication at least those books which have reference to the holy scriptures, sacred theology, ecclesiastical history, canon law, natural theology, ethics or other religious or moral subjects of this kind, and in general all writings specially concerning religion and morality.

42. Let not members of the diocesan clergy publish even books treating of the arts and purely natural sciences without having consulted their ordinaries, so that they may give a proof of their obedience towards them. They are forbidden to undertake the directing of journals or periodical sheets without first having obtained leave from the ordinaries.

CHAPTER IV.

PRINTERS AND PUBLISHERS OF BOOKS.

274. 43. Let no book subject to ecclesiastical censure be printed unless it bears at the beginning the name and surname both of the author and publisher; also the name of the place and the year in which it is printed and published. If in any case it seems well that the name of the author should be withheld, the

power of permitting this is to lie with the ordinary.

44. Printers and publishers of books should bear in mind that new editions of a work which has been approved require a fresh approbation, and that the approbation given to the original text does not suffice for its translation into another language.

45. Books condemned by the Apostolic See must be considered condemned everywhere, no matter into what language they are translated.

46. Let all vendors of books, especially those who rejoice in being catholics, neither sell, supply nor keep books treating "ex professo" of obscene matters; other prohibited books let them not keep for sale, unless they shall have obtained leave through the ordinary from the Sacred Congregation of the Index, and let them not sell them to anyone unless in the exercise of a wise discretion they can form the opinion that they are lawfully sought by the purchaser.

CHAPTER V.

PENALTIES AGAINST TRANSGRESSORS OF THE GENERAL DECREES.

275. 47. All and everyone reading, without the authorization of the Apostolic See, the books of apostates and heretics which champion heresy, also the books of any author whatsoever expressly forbidden by apostolic letters, and keeping, printing or in any way defending those books, incur ipso facto excommunication specially reserved to the Roman Pontiff.

48. Those who, without the approbation of the ordinary, print or cause to be printed the books of the sacred scriptures or notes or commentaries upon

them fall ipso facto under excommunication unreserved.

49. Those who shall have transgressed in the other things prescribed by these general decrees are to be seriously admonished by the bishop in accordance with the degree of gravity in the transgression; and if it shall appear fitting, let them be restrained by canonical penalties.

We decree that this letter and all that it contains can never be censured or impugned on the ground of its having been obtained through furtiveness or surprise, of imperfect intention on our part, or of any other defect whatsoever, that it ever shall be and is in force, and that it should be inviolably observed, judicially and otherwise, by all persons of whatsoever degree or pre-eminence, also declaring null and void the action of anyone, by whom, with whatever authority or under whatsoever pretext, knowingly or unknowingly, anything different to this should happen to be attempted, everything to the contrary notwithstanding.

Moreover, We desire that copies of this letter, even when printed—subscribed, however, by a notary and strengthened by the seal of the ecclesiastical dignitary—should have the same credit as would be given to the indication of Our Will on the presentation of the present letter.

To no man, then, let it be permitted to violate this page of our constitution, ordinance, limitation, restriction and will, or with rash daring to go against what it prescribes. And if anyone should presume to do so, let him know that he will incur the dis-

pleasure of Almighty God and the Blessed Apostles Peter and Paul.

Given at St. Peter's, Rome, on the 25th of February, in the year of the Incarnation of Our Lord, 1896, the nineteenth year of Our Pontificate.

A. CARD. MACCHI.

A. PANICI, Subdatarius.

VISA

DE CURIA I. DE AQUILA E VICECOMITIBUS

Loco Plumbi.

Reg. in Secret. Brevium.

I. CUGNONIUS."

DUBIUM CIRCA REVISIONEM LIBRORUM.

In congregatione generali habita in ædibus Vaticanis die 1 Septembris 1898, proposito dubio super Constitutione "Officiorum et munerum," videlicet: "An peracto examine, Ordinarii teneantur auctori, denegatæ licentiæ librum publicandi, rationes manifestare?"

Eminentissimi Patres, re mature perpensa, respondere decreverunt: "Affirmative, si liber videatur correctionis et expurgationis capax."

Datum Romæ ex S. Indicis Congregationis Secretaria, die 3 Septembris 1898.

FR. ANDREAS CARD. STEINHUBER, Præf.

FR. MARCOLINUS CICCOGNANI, Secret.

CHAPTER X.

VARIOUS EDICTS: VISITATION, SYNOD, SEMINARY, FOUNDATION OF CONVENTS, COLLECTING ALMS.

276. One of the chief cares of a bishop is the visitation of his diocese. While this duty may be delegated by a special mandate, still unless a just cause and impediment render it impossible this work should be performed personally by the bishop. In this visitation of the diocese he begins with the church he prefers and is free to follow an order convenient for himself. The order and dates of visitation are usually published with the decree. The list of persons and things to be visited is to be found in the Roman Pontifical, Part III, and is given below.

But among other things, the bishop, at least in his first visitation, may ask for letters showing ordination and appointments and he may insist on an inventory of all church property being made and filed in the diocesan chancery. (*Cf. Quarantus in Summa Bullarum, v. Archivium.*) The expenses of the visitation as well as the maintenance of the bishop are to be arranged in diocesan synod, not outside. (*Cf. II Balt. n. 100. III Balt. n. 14.*)

277. Following is a form for the edict of visitation:

"N. By the grace of God and the favor of the Apostolic See Bishop of N.

Being about to undertake the visitation of our

diocese in accordance with the prescription of the holy council of Trent and the sacred canons; We therefore give notice to each and all the faithful under our jurisdiction and all others interested, that We will visit, with our ordinary and also delegated authority, each and all churches of this city and diocese, as well as all chapels, oratories, altars, cemeteries, hospitals, colleges, schools and other pious places, convents of nuns and of regulars which by virtue of apostolic decrees are subject to Us; the cathedral chapter and its members and likewise all clerics, confessors, priors, syndics and ministers of hospitals, confraternities and other pious places; and the whole diocese.

Therefore let all the above mentioned know that on the —— day of — A. D. 18—, We shall begin the work of visitation in our cathedral church and continue it as announced below, with the purpose and to the end that as much as in Us lies with the help of God we may procure the salvation of souls, increase of divine worship, betterment in the state of the church, preservation of morality in the people and discipline in the clergy. Wherefore We warn each and all to whom pertains the care of government or administration of the said churches, monasteries, cemeteries and pious places, or the celebration of masses and divine offices or the performance of other functions, that, on the day on which We shall visit the aforesaid places they shall produce and show to Us the books of their administration, showing exactly receipts and expenses, the fulfilment of masses and of other obligations, and shall also indicate the obligations or debts existing on the said places, insurance policies, sources of income, statutes or constitutions, and an inventory of all the movable and immovable property thereunto pertaining. Further let all the dignitaries, canons and beneficiaries of the cathedral chapter, parish priests, confessors, vicars, chaplains and other clerics of our

whole diocese be present and assist at the visitation of their respective churches, and let each show the title, revenue, obligations and their fulfilment of the respective benefice, dignity, prebend, order, which he holds in the said church under pain of —— dollars, as a fine to be applied to pious places and uses.

But if anyone desires to suggest anything which concerns the glory of God, the convenience or utility of the church or the salvation of souls, We exhort him to make it known to Us by word of mouth or in writing. And in order that no one may plead ignorance of these premises We have ordered this our edict to be published in the usual way. Given &c.

[L. S.] N. Bishop of N—.
N. Chancellor."

Here should follow the dates assigned to each church.

278. Following is a list of things subject to episcopal visitation:

Of the Holy Eucharist.

Tabernacle.	Veil of ciborium.	Processional canopy.
Veil, and how many.	Particles.	Pyx, for the sick.
Interior lining.	Fragments.	Burse, etc., for Communion of the sick.
Corporal spread out.	Renewed, how often.	Monstrance.
Ciborium; bowl silver, gilt within.	Key.	Throne, for benediction.
Vessel for purifying the fingers.	Lamp, always burning.	Portable lanterns.
	Umbrellino for processions.	Humeral-veil.

Of the Baptistery.

Font.	Water.	Holy oils.
Cover.	Drain.	Salt.
Rails.	Shell.	Cloths.

Of the Holy Oils.

Ambry on the Gospel side of Sanctuary.	Vessels for holy oils.	How brought from the cathedral.
Inscription (exterior and interior.)	Cotton wet with oil, dry cotton above.	Renewal.
	Purple burse, or cover.	Burning the old.

Of the Confessionals.

In a public position.	Thick veil.	Doors with bolt.
Pierced grating.	Pictures.	Purple stole.

Of the Holy Relics.

Ambry.	Names.	Key.
Lining.	Approbation.	Proper Offices.
Reliquaries.	Exposition.	Festivals.

Of the Altars.

High Altar.
Steps up to it.
Steps upon it.
Stone Altar.
Consecration.
Wax-cloth.
Altar-cloths.
Their blessing.
Crucifix.
Candlesticks.
Statues.
Pictures.
Altar-cards.
Covering.
Cloths for changing.
Antependiums, and how many.
Canopy.
Predella.
Credence.
Piscina.
Screen, or rails.
Bell.
Endowment.
Obligations.

Of the Chnrch Itself.

Choir.
Large Crucifix, in a prominent place.
Bishop's throne, steps and canopy.
Nave and aisles.
Walls.
Images of saints.
Pulpit.
Windows.
Vaults.
Seats.
Division of sexes.
Roof.
Pavement.
Ambry.
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Holy-water stoups.
Doors.
Churchyard.
Cross therein.
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Pavement.
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Benediction, how often
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Ambries.
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Missals, binding.
Chalices.
Patens.
Purificators.
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Veils.
Burses.
Amices.
Albs.
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Stoles, maniples and chasubles, of five colors, for feast days, for ferias
Dalmatics.
Tunics.
Copes of different colors.
Humeral veils.
Altar-cushions and book-stands.
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Bells.
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Catechism.
Vespers.
Processions.
Proper feasts.
Customs.
Monthly conferences.
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Blessing of ashes, candles palms.
Holy week.
Blessing houses.
Holy Sepulchre.
Blessing font and Paschal candle.
Pious pictures.
The long litanies.
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Baptism, how long delayed.
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Godfathers and godmothers.
Confessions, where, at what time.
Instructions for first communion.
Sick persons and how often.
Visiting sick, commendation.
Marriages, how, where.
Other functions.
Lent sermons.
Funerals.
Moral and dogmatic theology.
Books, what studied.

279. The bishop should watch that his secretary or chancellor of visitation carefully puts in writing all the acts of visitation, because the books in which the provisions, orders and decrees made during visitation are entered constitute full proof. (*Cf. Monacelli, T. 5, f. 2, 59.*) Against these decrees there is no suspensive, but only a devolutive appeal.

280. Following is a form for appointing a visitor when the bishop is impeded from visiting the diocese:

"N. Episcopus N. Dilecto N. N. &c.

Cupientes Sacri Concilii Tridentini decretum de visitanda diœcesi exequi, sed, adversa valitudine detenti, ecclesias et loca pia personaliter visitare non valentes, Te de cujus fide; integritate, scientia et experientia plene in Domino confidimus, visitatorem totius nostræ diœcesis delegamus, eligimus et deputamus, cum facultate ecclesias, monasteria, confraternitates, cœmeteria, hospitalia, collegia, locaque alia pia et religiosa visitandi, computa et administrationes eorundem locorum revidendi, debitores, officiales et administratores ad libros exhibendum et reliquatum respective solvendum compellendi juris et facti remediis, sola facti veritate inspecta. Potestatem insuper decreta quæcunque faciendi et exequendi dummodo processum non requirant; procurationem a visitatis, prout juris est, exigendi, et alia gerendi, quæ facere, gerere et exequi tam ordinaria quam etiam delegata auctoritate Nosmetipsi visitantes possemus, Tibi omnia generaliter et specialiter committimus. In quorum fidem &c. Datum &c.

[L. S.] N. Episcopus N.

N. Cancellarius Episcopalis."

281. When the bishop, or his delegated visitor, is impeded maliciously or violently from making the visitation of places which by law or custom are subject to his visitation, he may enforce his rights even

by immediate excommunication of the opponents without other or previous judicial warning. (*Cf. n. 334-335 below.*) Such would be the case, if, when proper notice of visitation has been given, the doors of the place to be visited are locked against the bishop or opposition is otherwise notoriously manifested. (*S. Cong. Conc. in una Vicen. juris visitandi 26 Sept. 1699, et 16 Jan. 1700.*) In similar circumstances he might interdict the people or place, whenever the honor, reverence and things (res) usually given are publicly and injuriously denied the bishop. The same S. Cong. of the Council sustained a censure of interdict thus inflicted. (*S. C. C. in Venaphrana interdicti, 26 Jan. 1697.*)

282. Following is a form for excommunication in such circumstances:

"On the — day of — A. D. — when the Most Reverend N. N., Bishop of N—, was exercising his jurisdiction by making visitation, N. N. and N. N. dared actually and notoriously to resist him and to oppose him wishing to visit the church of N—. Wherefore the aforesaid Most Reverend Bishop in the very act of manifest violence thus offered him, and for the defense of his rights, repelling force by force, excommunicated the aforesaid N. N. and N. N. and commanded these papers against them to be issued and affixed, that they may be avoided by all the faithful.

[L. S.] N. Chancellor (or actuary) of Visitation."

283. The following form may be used for interdict:

"We, N. N., Bishop of N—, on this — day of — A. D. — have placed under ecclesiastical interdict the church of N—, (or the city or persons) because (here state the reason.) Signed:

[L. S.] N. N. Chancellor. N. Bishop of N—."

The following form may also be used:

"This church of N—, (or city or people) is published as under ecclesiastical interdict by our ordinary (or delegated) authority because (here state the reason.) Dated this — day &c.

[L. S.] N. Bishop of N.
N. Chancellor."

284. A diocesan synod is usually held after the bishop's visitation. The sacred canons require that one be held every year and the Third Council of Baltimore, n. 23, suggests the same, when it enacts that "each year in diocesan synod examiners of the clergy are to be chosen who will be satisfactory to the synod and approved by it." Each three years the diocesan consultors also are to be chosen after proposal of names by the clergy, which undoubtedly can be done satisfactorily only at a meeting of the priests. The Third Council of Baltimore, n. 20, requires that the bishop ask the advice of his consultors before calling and publishing a diocesan synod. Hence for safety mention of this advice regarding the holding of a synod should be inserted in the minutes of the synod and in the call thereto. In this call, the cathedral chapter, where it exists, should be invited by name to participate. A synod may be held outside a church, but the most appropriate place is the cathedral. Under no circumstances is it lawful for a bishop to hold a synod in the diocese of another bishop, even with his consent. He cannot order priests to leave their own diocese. Hence, too, all appointments made in a synod held outside of a bishop's own diocese seem null and void, for the required jurisdiction seems lacking.

285. Following is a form for noting that the advice of the chapter (or consultors) was asked:

"Die —— mensis —— anno—.

Convocato coram Illmo et Revmo D. N— Episcopo in ædibus episcopalibus hujus civitatis N—, capitulo cathedrali, nempe N. N. et N. N. dignitatibus et canonicis majorem partem capituli constituentibus, ibique capitulariter congregatis, fuerunt per me infrascriptum, de mandato ejusdem D. N—, Episcopi, intelligibili voce lecta decreta et ordinationes, quæ evulgari et publicari debent in proxima futura synodo habenda die — mensis —; super quibus expleta lectura, idem D. N—, Episcopus consilium eorundem DD. dignitatum et canonicorum sic capitulariter congregatorum requisivit, qua per eos requisitione audita, propositum et determinationem dicti D. N—, Episcopi, synodum habendi et in eadam decreta supra memorata publicandi laudaverunt et approbaverunt. In quorum &c. Presentibus testibus N. N. et N. N. Datum &c.

N. N. Cancellarius Episcopi."

The method of choosing the diocesan consultors and synodal examiners was given in the preceding part of this work, n. 47 and n. 107.

286. Following is a form of edict for calling the synod:

"N. Episcopus N—.

In suscepti a Nobis episcopatus primordiis, gregem curæ nostræ divina dispensatione commissum, personaliter visitare et universam diœcesim perlustrare nequaquam distulimus, et quidem omnium in ea locorum conditionem, ecclesiasticorum disciplinam, necnon populorum mores dignoscentes, ea quæ reparatione aut reformatione indigebant, pro viribus restaurare curavimus. Ut igitur quæ cultui divino christianæque pietati consona sunt validius consol-

identur, capitulo consulto, diœcesanam synodum celebrare decrevimus. Universis proinde ac singulis, qui tam in civitate quam in cœteris nostræ diœcesis locis, beneficiis etiam sine cura potiuntur, presbyteris ac clericis tam in sacris quam in minoribus ordinibus constitutis, aliisque omnibus etiam regularibus qui de jure vel de consuetudine tenentur adesse, in virtute sanctæ obedientiæ, necnon sub pœnis per sacros canones injunctis ac aliis arbitrio nostro infligendis præcipimus et mandamus, capitulum autem nostrum peramanter invitamus, ut die — proximi mensis—, quam pro synodo inchoanda signanter indicimus, clericali habitu telari induti, ac aliis indumentis et signis eorum muneribus et ordinibus respective congruentibus instructi, in ecclesia cathedrali hora octava antemeridiana conveniant. Ut autem id exactius ad omnipotentis Dei laudem et gloriam perfici queat, omnes in Domino enixe obsecramus ut orationibus a Patre luminum auxilium Nobis impetrent et seipsos Deo acceptabiles exhibeant. Volumus autem ut hæc synodi indictio affixa valvis ecclesiæ cathedralis necnon parochialium diœcesis, omnes afficiat ac si fuisset singulis intimata. Datum &c.

[L. S.] N. Episcopus N.

N. N. Cancellarius Episcopalis."

Instructions as to lodging, hours of meeting and other things usually are sent to those obliged to attend the synod. It is evident, too, that a prudent bishop will take counsel of learned, wise and prudent men and submit his proposed decrees to them before publishing them in synod. This is especially true when entirely new methods are to be introduced or radical changes made.

287. Among the chief cares of a diocesan bishop is the erection and conduct of a seminary for instructing young men destined for the priesthood. Accord-

ing to the council of Trent each diocese should have its seminary. Where this is impossible, at least each province should have a common institution. (*Cf. III Council Balt. n. 155.*) For counsel and assistance in governing the seminary the bishop is ordered by the council of Trent to choose regents, one of whom he must select from the cathedral chapter, the other from the diocesan clergy. Further the chapter chooses a regent and the clergy also one, making four in all. Their tenure is perpetual and they cannot be removed except for cause. Where the seminary is not endowed and has not sufficient funds for its support, the regents (deputati) may impose a proportionate tax on the episcopal manse, the chapter, all benefices, even if they are of *jus patronatus* or exempt. If then sufficient support is not at hand, simple benefices may be united to the seminary. But a real necessity is required before this union can be effected.

288. The III Council of Baltimore, n. 178-179 following the council of Trent, decrees that the bishop shall select *deputati* or regents. These *deputati* are of two kinds: Those whose advice must be asked concerning the internal management of the seminary and those whose advice is necessary regarding the administration of its temporal affairs, such as the levying of a tax for its support, the examination of accounts and the like. For each seminary, minor or major, at least two deputies are to be selected, one for the spiritual matters, such as the instruction, discipline and character of the students; the other for temporal concerns. These regents will be chosen for diocesan seminaries by the re-

spective bishops after taking the advice of their consultors, and for provincial seminaries by the bishops of the province as a body.

289. Private seminaries and colleges under the management of secular priests are declared subject to the jurisdiction and inspection of the diocesan bishop. Those in charge of religious orders or institutes are to keep the arrangement entered into by proper authority. But it should be noted that a bishop cannot without special permission from the Holy See give a seminary into the charge of a religious order or institute, and whenever such a religious community is put in charge, the rights of the bishop should be conserved. (*Cf. Bened. XIV, de Syn. Diœces. l. 5, c. 2, n. 9.*)

The council did not make any enactment concerning the support of the seminary. Up to the present time in the United States the usual method has been an annual collection taken up in every church of the diocese, none, even those in charge of religious orders being exempt. (*Cf. Const. Rom. Pontifices.*)

290. The following form for decreeing the erection of a seminary may be useful:

"N. N. Episcopus &c.

Cum in hac civitate et diœcesi N— nullum seminarium majus (vel collegium ecclesiasticum puerorum) juxta Concilii Tridentini dispositionem et Tertii Plenarii Concilii Baltimorensis decreta erectum et institutum existat, cumque ejusdem necessitas seu maxima utilitas indies innotuerit; Nos igitur volentes decretis conciliaribus satisfacere et necessitati diœcesis consulere in præmissis opportune providendo, cum concilio N. N. et N. N. nostræ cathedralis graviorum canonicorum, quos pro regimine et

gubernio seminarii erigendi deputatos eligimus, (vel suscepto diœcesanorum consultorum concilio) in hac civitate in domibus N. in via N— unum seminarium majus (vel minus) pro uno illius rectore et competenti numero juvenum nostræ diœcesis requisita a Tertio Conc. Plen. Balt. (tit. 5) habentium perpetuo usu et habitatione, qui in eodem philosophiam, theologiam, sacram scripturam, jus canonicum, liturgiam, aliaque necessaria (mutantur pro minori seminario) ediscant, perpetuo erigimus et instituimus; illique sic erecto et instituto, pro ejus dote illiusque rectoris et alumnorum sustentatione bona —— assignamus et appropriamus ita ut liceat rectori et alumnis pro tempore existentibus per se vel alium sive alios etiam dicti seminarii nomine propria auctoritate corporalem, realem et actualem possessionem dictorum bonorum, illorumque functuum, reddituum et proventuum libere apprehendere et apprehensam perpetuo retinere, eosdemque fructus et redditus percipere, levare, ac in suos et dicti seminarii usus et utilitatem convertere, cujusvis licentia desuper minime requisita. (Si taxa beneficiis est imponenda additur.) Et quia pro manutentione magistrorum et sustentatione alumnorum ac mercede inservientium bona et redditus ut supra assignata non sufficiunt, ideo ut portio aliqua et fructibus mensæ nostræ et aliorum quorumcunque beneficiorum etiam regularium civitatis et diœcesis probe ad supplendum dictis expensis ad formam S. Conc. Trid. detrahatur et etiam seminario applicetur, pro conficienda taxa Rev. Canonicum N. N., de capitulo et Rev. N. N. de clero ex parte nostra in consultores eligimus et deputamus; mandamusque ut alii duo, alter per capitulum, alter per clerum infra terminum 30 (vel alias) dierum eligantur. Et ita in executionem decreti Conc. Trid. sess. 23, c. 18, de ref. et decretorum Con. III Pl. Balt, erigimus, instituimus et bona respective assignamus, omni meliori modo quo possumus.

[L. S.] Datum &c. N. Episcopus N."

Lectum, latum et publicatum fuit præsens decretum erectionis seminarii in civitate N— in ædibus episcopalibus die —— mensis —— anno ——; præsentibus N. et N. ad id pro testibus specialiter adhibitis atque rogatis.

N. N. et N. N. testes.
N. N. Cancellarius Episcopalis."

291. Following is a form for certifying the tax roll and the assessment on each benefice in accordance with the above edict:

"Cum seminarium ecclesiasticum in hac civitate erectum pro manutentione magistrorum, alumnorum et inservientium redditus sufficientes non habeat, eidem propterea congrue providere volentes, infrascriptam portionem sive partem fructuum nostræ mensæ et aliorum beneficiorum ecclesiasticorum hujus civitatis et diœcesis collegio prædicto applicandam cum concilio consultorum deputatorum ad formam decreti Con. Trid. cap. 18, sess. 23, de ref., auctoritate Nobis in eodem decreto tributa detrahendam duximus, prout præsenti decreto nostro pro nunc in quantitate infrascripta detrahimus, taxamus, et præfato collegio seu seminario applicamus, ac annis singulis tam per nostram mensam quam per capitulum et cæteros beneficiarios infrascriptos solvi in mense — et contribui debere mandamus, videlicit:
Mensa episcopalis scutata ——.
Capitulum cathedralis scutata ——.
Parochialis ecclesia N — scutata ——.
Beneficium simplex sub inv. N. in ecclesia N. scutata —— (et sic nominentur omnia beneficia.)
N. Episcopus N.
N. N. consultor dep. capituli ab Ill^mo^ Episcopo.
N. N. consultor dep. capituli pro capitulo.
N. N. consultor dep. cleri ab Ill^mo^ Episcopo.
N. N. consultor dep. cleri pro clero.
N. N. Cancellarius Epis. rogatus."

292. The laws of the church prohibit a priest from acting as guardian or administrator for any except his relatives within the fourth degree. A special dispensation from the bishop is required for all other cases, and even in the case of relatives permission should be obtained. Clerics are also forbidden to go bail for others or act as their procurators. (*Cf. II Conc. Pl. Balt. n. 157.*) Permission may be given by the bishop in this form:

"N. Bishop of N. To N. N. &c.
Since you, as a near relative, are by law a proper guardian of N. N. and N. N., minors, and since you desire to act as such, We hereby grant permission for you to do and perform all and singular the things required by law, use or custom to be done by guardians, until the said minors shall become of age; provided, however, that you in no way undertake or become mixed in affairs interdicted by law to ecclesiastical persons. In testimony whereof &c.
Given &c.
[L. S.] N. Bishop of N.
N. N. Bishop's Chancellor."

293. When a monastery is to be established, the explicit permission of the bishop of the diocese and of the Holy See is required. (*Cf. Const. Romanos Pontifices.*) In granting permission the bishop is obliged to see that the apostolic constitutions are observed, and particularly that the new foundation and the religious to be introduced can be properly supported without detriment to the religious houses already in existence and without detriment to parish churches. (*Cf. Monacelli, T. 1, t. 6, f. 19.*) When monasteries claim the privilege that others shall not be established within a certain distance, this privi-

lege, if real, must be guarded in establishing new monasteries. But this does not apply to congregations of secular priests living in community and founded solely by episcopal authority. (*Cf. S. C. C. 9 Aug. 1625, ex lib. 12, Decret. fol. 298.*) It should be noted that if a parish priest sees that a chapel is being erected in his parish and does not protest he is supposed to have consented and cannot later bring suit on that head. (*R. Rota. 23 June 1705.*)

294. Regarding the establishment of convents for nuns there is no such privilege or prohibition. It is required that they have the bishop's permission, and the assurance of a competent support. For sisters who do not take solemn vows nor observe cloister the Holy See leaves the establishment of new houses entirely with the bishop, and it refuses to recognize their foundations directly or indirectly. (*Cf. S. C. C. 20 Feb. 1693, in una Imol.*) Even though the bishop of the diocese visits such foundations, they are not for that reason considered approved. (*Cf. S. C. C. 1608.*)

295. In the erection of a convent for nuns, and this applies also to houses for sisters belonging to religious congregations, the bishop before giving his consent, should see to it, 1° That the goods assigned as an endowment are safe and sufficient for community life. 2° That the house is not established in a small place where there is no chance to get confessors, except the house is wealthy enough to pay the expenses for securing them. (*S. C. Epp. 13 Sept. 1583.*) 3° That the house is not established near a monastery of men (*Cf. Can. Monast. puell. 18, q. 2.*) 4° The founder, he who endows, may make certain

conditions, provided they are not against good morals or discipline, but he cannot reserve the right of choosing the superior. 5° The nuns of any and every order or rule should be subject to the jurisdiction of the ordinary in order to preclude dissensions and complaints; and therefore they should not be subject to the jurisdiction of any religious order. A prudent bishop will constantly refuse his consent to any foundation unless the convent is subject to his jurisdiction. Such too is the general law. (*Cf. Cap. Cognovimus 18, q. 2; Monacelli T. 1, t. 6, 21.*) 6° The number of members of the convent should be fixed. 7° The bishop may exact an agreement in writing that the religious will not collect alms, (*Cf. S. C. Epp. 4 July, 1692,*) for the Holy See replied that a foundation may be made "*Cum strictissima obligatione non quæstuandi.*" Monacelli also holds that a bishop may lay down as a necessary condition of his consent that the religious may not acquire real estate. (*Cf. Monacelli, Form T. 1, t. 6, n. 19, n. 29.*) In fact a multitude of religious houses cannot but greatly interfere with parish rights and also with smooth diocesan administration. Too many religious houses interfere not only with the rights of the bishop and the diocesan clergy, but also become injurious to each other. A proper number is good and useful. (*Cf. S. C. C. in Tiburt. 28 Feb. 1698.*)

296. Besides religious orders there are especially in the United States religious congregations which are diocesan or scattered over several dioceses, though not exempt from the jurisdiction of the ordinary of the diocese wherein the house exists. The men or women respectively of such congregations

take simple vows either temporary or perpetual. The vow of poverty which they take does not render them incapable of acquiring and disposing of property. Only the use and administration of it are prohibited. They should therefore before they take vows give over the administration and use and proceeds of their property to whomever they choose or to their congregation for the time they will remain in the community. (*Cf. S. C. EE. et RR*, *12 Junii 1858.*) The congregation does not obtain the dominion of their property acquired even when in the convent, except when they give it. If a sister leaves the community or is expelled her dowry is to be returned. (*Cf. S. C. C. in Castell. 3 Mar. 1792; S. C. Ep. et R. in Comen*, *1 Dec. 1758.*) In fact only by the death of the sister does her dowry become the full property of the convent.

297. When a religious congregation is only diocesan the Holy See does not approve it, but leaves its approval to the bishop of the diocese. When, however, it has houses in various dioceses, it should apply for approval to the Sacred Propaganda. The first requisites for obtaining this approval are: 1° Letters of the bishop in whose diocese the mother-house is situated, and letters also of the other bishops in whose dioceses branch houses exist. These letters should show when and by whom the institute was founded, whether a "decree of praise" has already been obtained from the Apostolic See, how many houses the institute has and how many professed religious, when the constitutions were put into effect, what progress the new institute has made, what vicissitudes it has undergone, what is its present condi-

tion and what the amount of its property. 2° The consent of all the religious given capitulariter is required. 3° A successful trial of the constitutions of the institute. When these matters are sent to the Propaganda and a compilation is made, the matter is referred to a commission of consultors over whom a cardinal belonging to the Propaganda presides. One of the consultors examines and reports on the matter to the commission of consultors who in turn formulate a report in writing. The whole matter, with the report, is then referred to the congregation of the cardinals for final adjustment.

298. If the institute is only diocesan, it is subject entirely to the bishop's authority and jurisdiction. If not merely diocesan but scattered over several dioceses and subject to one superior general, then no bishop can be the superior of the congregation, but each bishop may exercise jurdisdiction over the houses and the religious existing in his own diocese, according to the sacred canons and the constitutions approved by the Holy See. The authority of the superior general must be preserved, as laid down in the approved constitution, and therefore a bishop may not interfere in those matters which concern the general government of the whole institute or congregation even though the mother-house is situated in his diocese. Neither can he make any change in the constitution especially if approved by the Holy See. (*Cf. S. C. Ep. et R. 8 June 1846, in Const. Taur.*)

299. The bishop of the diocese must appoint the ordinary and extraordinary confessor, and "the right of naming them is usually not given the nuns themselves." (*S. C. Ep. 1 Sept. 1860.*) The bishop may

also give the institute permission to alienate property of small value, and he must be heard before a sister is expelled. (*Eadem Cong. 20, Feb. 1861.*) He presides over the chapter for the election of a superior, but he cannot mix in the deliberations either by voting or dictating a vote. (*Cf. Zitelli, App. Juris Ec. p. 244.*) The Sacred Congregation of Bishops and Regulars has extended to these institutes the requirement of the council of Trent that the bishop must examine novices regarding their vocation before they are professed. (*23 March, 1860.*) The bishop has the right of inspection as to faith, community life, the eradication of scandals and abuses; but domestic direction does not belong to him but to the superiors of the houses. The right of visitation belongs to the bishop, and although the superior general may have the right to visit all the houses for the preservation of regular discipline, still the same Sacred Congregation of Bishops and Regulars in 1858 ordered such superiors to abstain from officially visiting the church and the things pertaining to it. The administration of the property of the whole institute or congregation belongs to it, not to the bishop; but an abuse committed in the administration falls under his jurisdiction as ordinary, and he can curb the excess. The institute, not the bishop, holds the legal title to its real estate and other property. (*Cf. Zitelli, l. c.*) The bishop may appoint a delegate to perform the above mentioned acts in his stead.

300. The following form for giving consent to the establishment of a monastery or convent may be used but to it the necessary conditions should be at-

tached and made part of it. A duplicate of the agreement should be kept in the chancery.

"N. Episcopus N.

Tibi, Revdo Patri N. ordinis — pro vinciali, ut una cum difinitorio, cujus consensum exhibuisti, ac servatis in reliquis constitutionibus ordinis, constito Nobis duodecim religiosos tuæ religionis commode sine aliorum detrimento sustentari posse, monasterium, seu conventum absque tamen oratorio publico in loco N— hujus nostræ diœcesis, juxta constitutionem Apost. "Romanos Pontifices," extruere et fundare possis, sine tamen præjudicio ecclesiarum parochialium dicti loci, ac nostræ cathedræ, licentiam et facultatem, quantum ad Nos spectat, concedimus et consensum præstamus, dummodo quis aliquid revelans quod fundationi sbstare possit, non superveniat; et dummodo conditiones infrascriptæ omnino adimpleantur, videlicet: (ponantur conditiones.) Datum &c.

[L. S.] N. Episcopus N.
N. N. Cancellarius Episcopalis."

301. Another form, similar to this, may be used:

"N. Bishop of N. To the Sister Superior of N. It appearing advantageous that a hospital (school, convent) be established in the city of N— in our diocese, and you having assured Us in writing that your order (or some person) has devoted sufficient means or money for that purpose, and the constitution of your order having been observed in other respects, We hereby grant you, inasmuch as pertains to Us, the necessary permission and faculty for erecting and founding a hospital, (school, convent) without however a public oratory or chapel, in the aforesaid city on —— street, no. ——, in accordance with the constitution of Pope Leo XIII, "Romanos Pontifices," and without any prejudice to parish churches or our cathedral, and on condition that nothing will super-

vene to oppose the foundation, and on the further essential condition that neither you nor the sisters for the time being in the hospital now or in the future shall collect or attempt to solicit alms in our episcopal city or diocese and that no real property shall be bought for the use of the said hospital (school, convent) without our previous permission in writing. In testimony whereof, &c. Given &c.

[L. S.] N. Bishop of N.

N. N. Bishop's Chancellor."

302. When a religious house of any kind is to be established in a diocese the consent of both the bishop and the Holy See is required. When once established the institution cannot be moved from place to place or converted into another similar use, as a school into a church, a monastery or convent into a college or into a house for orphans or the sick, or vice versa. Neither can a new cause or use be affixed and the original use preserved, unless this new use concerns only the internal administration or domestic discipline of the religious community. Thus sisters teaching a parish school may not start a boarding school or asylum on the original foundation, but a scholasticate for the religious may be opened in a monastery or convent, provided no outside students are received without express and explicit permission of the bishop and the Holy See. Much less can a monastery open up a church to the public or an asylum. These are the words of the apostolic constitution *Romanos Pontifices*: Sodalibus religiosis novas sibi sedes constituere, erigendo novas ecclesias, aperiendove cœnobia, collegia, scholas, nisi obtenta prius expressa licentia ordinarii loci et Sedis Apostolicæ, non licere."

"Religiosis sodalibus non licere ea quæ instituta sunt in alios usus convertere absque expressa licentia Sedis Apostolicæ et ordinarii loci, nisi agatur de conversione, quæ, salvis fundationis legibus, referatur dumtaxat ad internum regimen et disciplinam regularem."

303. The soliciting of alms is a matter which causes much vexation and scandal. The diocesan bishop alone has the right to issue permits to collect alms. But for the regular mendicant orders this permission is not required for convents existing in the diocese. (*S. C. Ep. in Casal. 6 Oct. 1598.*) Nevertheless the bishop can forbid by edict or otherwise any and all religious from begging or seeking alms unless they first show the written permission of their superior countersigned by the bishop. (*Cf. Monacelli, T. 1, t. 6, f. 6, n. 8; S. C. C. in Theat. 30 Apr. 1678.*) Moreover these religious must themselves collect alms and cannot employ seculars or others for the purpose. (S. C. C. pluries declaravit.)

304. When others besides religious of the mendicant orders collect alms, they may not participate in the alms thus collected, (*S. C. C. teste Fagnano*) but must have a stipend from some other source. Further all scandalous methods must be avoided. Hence, if the collectors use threats, imprecations blessings or special prayers, or distribute statues or sacred things, or offer privileges, the bishop may severely chastise them even though they are laymen or exempt religious. He may even excommunicate them. (*Cf. Barbosa de off. Ep. all. 109, n. 12; Monacelli l. c. n. 5.*

305. Regular permission to collect alms is given

only to asylums or hospitals in which orphans and the poor are actually supported. Nevertheless to-day other institutions doing charitable work and unable from their endowment to pay all their expenses are sometimes given permission by the bishop to solicit alms. If the needy institutions are in charge of sisters, or penitents, it is not allowed for them to personally solicit alms, but as ordered by Pope Gregory XIII (*Const. impressa in Bull. novo, t. 2, n. 8*) they are to remain in their convents and deputies appointed by the ordinary of the place are with his permission to solicit alms for them. Alms mean a free offering, not an assessment. Assessments cannot be levied for the benefit of charitable institutions; but voluntary collections may be ordered by the bishop in his judgment and pastors are obliged to announce them.

306. Rightly then did the Third Council of Baltimore n. 95, severely condemn the abuse of sisters or nuns going around soliciting alms often far from their convents and with great danger of scandal. It further prohibited sisters and also lay brothers from collecting without the written permission of the diocesan ordinary. Again in n. 295-296 the same council denounced the practice of secular and regular priests coming from other countries to collect alms often without previous permission and in spite of the ordinary of the diocese and the rectors of parishes. It declared the soliciting of alms with the promise of masses or such like an intolerable abuse, and vehemently reproved and prohibited the practice of sending circulars or cards offering masses for all who contribute to the building of a church, convent,

hospital or other institution. Thus it appears that the law guards against scandal, even though practice in some instances is diametrically opposed to the canons.

307. Following is a form for permitting the collecting of alms:

"N. Bishop of N. To &c.

You, who are of good life and approved piety and who are deputed by the officials of the asylum of—— in our diocese, are hereby granted permission to solicit alms throughout our whole diocese for the support of the said asylum whose revenues are not sufficient for the purpose; provided you do so modestly and without threat or fraud or any publishing of masses or favors, and provided all the money or alms which you may collect shall be used for the support of the said asylum, concerning which the officials will render Us an account during our visitation. This permission will last until —— and is given gratuitously. In testimony whereof &c. Given &c.

N. Bishop of N. (or Vicar General.)
N. N. Chancellor."

CHAPTER XI.

THE ALIENATION OF CHURCH PROPERTY.

308. The goods of the church are the patrimony of Christ; and ecclesiastical persons have only the use of church property. The real title or ownership is in the church, not in prelates who have only the administration of it. Where the church is not recognized as a corporation before the civil law, the civil title to church property should be placed not in any individual as such, but in a corporation recognized by both church and state. In the whole United States, so far as the state is concerned, there is no need of any bishop holding church property in fee simple in his individual name; for incorporation has never been refused and may easily be obtained. In Maryland, Massachusetts, Kentucky, Illinois, California, the bishops are incorporated by state laws as a "corporation sole." In Ohio, Indiana, Missouri, Iowa, the property is held by bishops who are recognized before the civil law as trustees. In New York, Wisconsin, Minnesota, North and South Dakota the property is held by a corporation consisting of the bishop, his vicar general, the pastor and two laymen, there being a separate corporation for each parish. This last system seems most in accordance with canon law, and best adapted to prevent the mixture of diocesan and parish property, which mixture is prohibited by the sacred canons. It also approaches

nearest the plan of the chapter holding under the old system, making the tenure perpetual.

309. In Michigan a very anomalous condition exists. The bishops claim to hold most of church property in absolute fee simple as individuals. The diocesan regulations—not the statutes—require the deed to be made without any trust appearing on its face. The Michigan statutes prohibit parole testimony to prove a trust in a deed on whose face no trust is shown. But it was supposed that statute 4727, Howell's, passed in 1867, could be made apply to save church property from passing to the bishop's heirs, and possibly parole evidence might be introduced to show a trust in the holding of the bishop. However, this statute, placing in each of the Roman Catholic bishops a trust title, while never used by the bishops, nevertheless has been quoted against them in favor of congregations when disobeying the injunctions of the bishop. Hence the danger of diverting parish property against the will of the bishop is increased, for the bishop actually holds neither in fee simple as absolute owner, nor yet with such powers of trusteeship as to prevent any layman of the parish from legally interfering. In 1897 a most liberal law was passed for incorporating churches, under section four of which the church itself may arrange the tenure of its property and select its own members for the corporation. Under this law a diocesan corporation and distinct parish corporations may be had.

310. The fee simple tenure of church property seems unsafe, unnecessary and unwise. Further it is against the sacred canons, for it is an actual wholesale

alienation, for which there can be given at present no satisfactory reason. That it has been done in the past is no reason for the future. In fact the Holy See has lately been insisting on a change from the fee simple tenure, and moreover has explicitly indicated that a change is coming, for on Jan. 11, 1897, in deciding a Detroit property case it added these words: "This same decision shall remain in force when the administration of the diocesan funds shall pass to a corporation to be eventually established for the holding of the property appertaining to the diocese."

311. If at any time it is necessary or very useful to alienate a certain piece of church property, or exchange it for another, such alienation must be made in accordance with canon law, otherwise the beneficiary and other administrators concerned in the alienation are *ipso facto* excommunicated. (*Cf. Const. Apost. Sedis.*) Under the head of church property comes the property not only of churches, but of all religious and pious places which have been founded for the worship of God, the salvation of souls or the care of the sick or the poor. Further, under the head of alienation comes every kind of contract, gift or change, compromise, union with another church, mortgage, renting for more than three years, or any other species of transfer. By the apostolic constitution, *Apostolicæ Sedis*, all alienation is prohibited. An exception is made for things of trifling value and such as are useless to the church because of the expense entailed.

312. But all kinds of property may be alienated if there is a sufficient reason and the proper solemnities are observed. A sufficient cause would

be, necessity, utility or piety. The solemnities required are, the consent of the cathedral chapter, or in the United States the advice of the consultors given as a collegiate body; and second the authority of the Pope in each case where the sum exceeds fifty dollars. In the United States the bishops have received special faculties by which they need not ask permission of the Holy See in each individual case of alienation; but it is distinctly stated that they can use these faculties only on condition that for *each case* the necessity or evident utility for the church must become apparent to the bishop *with the advice of the diocesan consultors*, and that at the end of every third year the bishop must report each case and the financial condition of the church interested. The passage, therefore, of decree 20, page 15, of the Third Council of Baltimore which says that the bishops need not ask the advice of their consultors when the sum does not reach $5,000, must be held inoperative when compared with the faculty which the Holy See really gave the bishops and in which no such exception is made. The bishops could not dispense themselves from obeying the common law of the church. We hold, therefore, that no bishop, in view of his special faculties can alienate any church property over $50 (*Vi canonis Terrulas*) without the advice of his consultors given as a collegiate body, which advice must be asked for each case. These are the words of the faculty: "—— Facultates extraordinariæ tribuuntur; *ea tamen lege, ut prædictu facultate utantur (episcopi) perspecta prius ex consultorum concilio necessitate vel evidenti utilitate ecclesiæ*, utque in fine cujuslibet

triennii episcopi ad S. Cong. referant quibus in casibus, et pro quibus summis, ea usi sint, exposita etiam statu œconomico illarum missionum pro quibus aes alienum contractum fuit." (*Cf. III Conc. Balt. pg. ciii.*) Hence it appears the alienation of church property is more serious than ordinarily supposed.

313. Following is the instruction which the S. Congregation of the Propaganda gave on July 30, 1867, regarding the alienation of church property:

1°. In venditione bonorum ecclesiasticorum, præmittatur eorumdem æstimatio a probis peritis scripto facienda; audiantur omnes interesse habentes; constet de evidenti Ecclesiæ necessitate vel utilitate; vendantur favore maioris oblatoris et non minori pretio quam quod a prædictis peritis fuerit æstimatum; pretium ab emptore integre solvatur in actu stipulationis, et collocetur in frugifero, tuto ac licito investimento; quod si non erit in promptu, deponatur pretium in aliqua capsa publica, vel apud aliquam personam spectatæ probitatis et idoneitatis, recepta tamen cautione scripto exarata, penes ipsum Patriarcham vel Episcopum ecclesiæ, ad quam pertinent bona vendita, accuratissime custodienda.

314. 2°. In permutationibus præmittatur æstimatio fundorum a probis peritis scripto facienda; audiantur omnes interesse habentes; constet de evidenti Ecclesiæ utilitate; et in contractus stipulatione expresse reservetur hinc inde regressus ad primæva iura in casu evictionis. Quod si valor fundi ecclesiastici superet valorem fundi qui ab ecclesia in permutationem recipitur, ea pecuniæ vis quæ ad peræquationem contractus est necessaria, ecclesiæ persolvatur in actu stipulationis, et collocetur in honesto, tuto ac licito investimento; atque interim deponatur uti supra in capsa publica, vel apud personam spectatæ probitatis atque idoneitatis.

315. 3° In contractibus emphyteuticis ineundis

præmittatur æstimatio peritorum; audiantur omnes interesse habentes; constet de evidenti Ecclesiæ utilitate; canon ab emphyteuta persolvendus non sit minor, quam qui a peritis statutus fuerit; stipulatio scripto consignetur cui descriptio fundi ac topographica eiusdem tabula adiiciatur; præstet emphyteuta hypothecariam inscriptionem super alio idoneo suo fundo, aut saltem hoc deficiente cautionem idonearum personarum pro securitate canonum trium annorum; atque in ipsa stipulatione obligationem emittat pro se suisque heredibus ac successoribus valituram, nunquam utendi qualibet præsenti vel futura lege seu privilegio affrancationis canonis, et melioramenta omnia solo cedendi.

316. 4°. Si agatur de Ecclesiæ bonis oppignorandis, vel de aere alieno contrahendo, necesse est, ut prius audiantur omnes interesse habentes, et constet de vera et gravi Ecclesiæ necessitate; quæ si vere intercedat, cavendum est, ut debitum illud, cum primum fieri poterit, ecclesia ipsa dimittat, eaque de causa imponatur eidem singulis in casibus obligatio contractum debitum extinguendi annuis ratis ab ipso Episcopo præfiniendis; ad quem effectum determinati aliqui ecclesiæ eiusdem redditus erunt assignandi, ac singulis vicibus deponendi in capsa publica, vel penes honestam atque idoneam personam, ut suo tempore investiri possint.

317. 5°. Cum vero Ecclesiæ pecuniam investiri contingat, duo imprimis diligentissime curanda erunt; primum ut a contractibus ineundis longe procul sit quævis usuraria labes, secundo ut Ecclesiæ indemnitati cautum sit; ideoque non collocetur eiusdem pecunia nisi apud honestas et idoneas personas, quæ præstent hypotecariam inscriptionem, vel saltem idoneam cautionem; omnesque huiusmodi contractus publicis tabulis pro recepto regionum more consignentur.

318. 6°. Denique in locationibus bonorum ecclesiasticornm cavendum est, ut locationes prædictæ fiant

iusto pretio, atque ut annuæ responsionis solutio non fiat anticipate in præiudicium successorum. Non licebit autem ecclesiastica bona locare ultra triennium: poterit autem Ordinarius, si specialem ab Apostolica Sede super alienatione bonorum ecclesiasticorum facultatem obtinuerit, permittere ut locationes prædictæ fiant etiam ultra prædictum tempus, dummodo non excedat novennium.

319. When church property is let for not more than three years, the pastors of the various congregations have the management and letting of what belongs to their respective congregations or parishes, and the superiors or officials of pious places or charitable institutions have respectively the letting of their property. (*S. C. EE. et RR. pluries declaravit, teste Pignatello.*) Hence, says Monacelli, they may, if there is no fraud or collusion, validly and licitely make contracts regarding rent for not more than three years without the permission of the bishop. (*S. C. EE. et RR. in Castell. 27 Feb. 1693; in Bonon. 4 Mar. 1694.*) Property let out for longer time than three years requires the beneplacitum apostolicum, or in the United States the consent of the bishop using his extraordinary special faculty as delegate of the Holy See with the advice of the consultors. But the bishop may not give permission that it be let for more than nine years.

320. It should be noted that property left to a church or other pious place erected by authority of the bishop, cannot be alienated without the permission of Rome, even though the testator so specified in his will. (*Cf. Auctores multos apud Monacelli T. 1, t. 5, f. 15, n. 19-22.*) Neither can a compromise be effected regarding the supposed rights of a

church to certain property without the sanction of the Holy See. (*Cf. S. C. C. Auscul. 14 Feb. 1699.*) Further it should be noted that not only regulars but also other rectors who alienate precious movable goods of the church incur excommunication, if they do this without the beneplacitum apostolicum, notwithstanding their good faith or permission of the general chapter of the order. (*Cf. S. C. C. in Seginen. 16 Mar. 1692.*) Neither can they alienate small things *vigore capitis Terrulas* without the decree of the ordinary of the diocese. (*S. C. Ep. in Tropien. 11 Jan. 1692.*) These decisions which are in full force to-day may interest the rectors of churches, for often they find it necessary or very useful to make changes in the movable goods of their parishes.

321. A regular process, though summary, is required in the alienation of church property even though this is not specifically mentioned in the beneplacitum apostolicum. (*Rota decis. 224 n. 11-12, par. 10*); and the utility for the church must be shown by judicial proof, that is by witnesses examined at the instance of the alienating church, who testify to such utility precisely at the time of alienation. The mere assertion of the parties interested or of the bishop or executor of the beneplacitum apostolicum is not sufficient. (*Rota decis. 36.*) (*Cf. Monacelli, T. 1, t. 14, f. 2, n. 1.*) The summary process as given in chapter 18 below may be used.

322. The permission given by the Holy See for alienating church property is always called a beneplacitum apostolicum, whether given by the Datary, the Sacred Congregation of the Council, or the Sacred Propaganda. When issued by the bishops

of the United States, by virtue of their special faculties, it may also be called a beneplacitum apostolicum. It is evident that when a parish church or pious place is to alienate property, the beneplacitum must be obtained in writing from the bishop, who having received the testimony of witnesses, and heard all those interested, after taking the advice of his consultors in each case, will issue a decree in proper form. (See note 2 on page 297.)

323. The delegated judges or commissaries to whom is intrusted the execution of apostolic beneplacita for the alienation of property are warned by Pope Paul II, (*Const. Cum in omnibus*,) to cautiously and diligently examine the causes put forth for the intended alienation and to carefully examine the witnesses and proofs, putting aside all fear and favor and having only God before their eyes. The permission given by the Holy See is always conditional, and therefore the executor must always verify the truth of the statements made in the application for the favor. Care should be taken to see that the money received for the property is carefully guarded or invested.

324. When the bishop by virtue of his ordinary power (canon Terrulas) grants permission for alienating things of less value than $50, he may use this form for the decree:

"Having considered the law and the depositions of witnesses formally examined, by which it appears that the alienation of a house (or other property) belonging to the church of N— in the town of N—, of the value of —— dollars (under fifty) situated on the lot N— as mentioned in the process, will redound to the evident utility of the said church; having also

heard those claiming an interest in the matter, We say and pronounce that there is place for the desired alienation, and therefore by the ordinary authority given Us by law, We grant permission to N. N. to alienate the aforesaid house (or other property) valued at —— dollars for the price of —— dollars, to the effect, however, that the said price thus received shall be all converted into —— and not otherwise; concerning which re-investment the said N. N. shall be charged and within —— days from date of alienation shall cause to be filed in our chancery office a certificate showing such re-investment, under pain even of censures, to be inflicted at our pleasure. Given &c.

N. Bishop of N. or Vicar General.
N. B. Bishop's Chancellor."

325. When the bishop by virtue of his special faculty as delegate of the Holy See gives a beneplacitum or permission to alienate church property worth over $50, having taken the collegiate advice of his consultors and complied with the other requirements of the decrees of the Propaganda mentioned above, he may issue a decree of alienation as follows, always specifying what disposition is to be made of the price received:

"Having seen the acts and the process constructed thereon, and especially considering the reports of the estimators who valued the property and the testimony of the witnesses who were specially examined, from whose depositions it appears that an alienation by sale (exchange, emphyteusis, loan for over three years) of the lots (describe property exactly) which are valued at — dollars, will be for the evident utility of the church of N— to which the aforesaid property belongs; having also heard all those having an interest in said property, We say and declare that there

is place for the alienation of the aforesaid property; and therefore having taken the advice of our diocesan consultors in this matter, by virtue of the special apostolic faculty granted Us for — years by the Holy See on —— day of —— A. D. —— We hereby grant permission and declare it permitted for N. N. the rector of the church of N— (or other person) to alienate the aforementioned property for the price of — dollars, to the effect, however, that the said price shall be wholly re-invested (converted or otherwise) into —— (mention exactly what) as was petitioned and as in the acts, and not otherwise; concerning which re-investment the said N. N. rector of N— (or other person) within — days from the date of alienation shall cause to be filed in our chancery office a certificate showing such re-investment, under pain even of censures, to be inflicted at our pleasure. And thus We grant permission for the alienation, omni meliori modo. In testimony whereof &c. Given &c.

[L. S.] N. Bishop of N—, Delegate.
N. N. Bishop's Chancellor."

326. When a church has become so dilapidated that it should be torn down, the bishop in his visitation may use the following decree for the purpose:

"On the — day of — A. D. — the Most Reverend N. Bishop of N— visiting the church of St. N— situated in N— in this diocese found it almost destroyed and destitute of sacred furniture; and not finding anyone whom by law he could oblige to repair it and there being no other way to restore it; having removed the sacred images, and taken up the consecrated altar stone, and workmen having removed the altars, by the faculty and authority conferred upon him both by law and the holy council of Trent, granted permission to N. N. to profane the said church and to convert its stones and other material

to the use of —, a cross being erected on the church site. In testimony whereof &c. Given &c.

N. N. Notary and Actuary of Visitation."

In such case the regular process of alienation must be used before the site or land is sold or exchanged.

327. It may not be out of place to mention the law regarding the change of a cathedral church. When a bishop wishes to transfer his cathedral from one city to another, the explicit consent of the Holy See is required. But is certain that a bishop with the consent of his chapter can transfer his cathedral church from one place in the city to another, even if betterment or preference is the only cause. For such transfer no permission of the Holy See is necessary. (*Cf. Can. Si quis vult 16, 9, 7; Glossa in can. Tribus distinct. prima, verbo, Difficultas, in fine de consecra.* Et tradunt *Mandos. de Signatura Gratiæ, tit. de trans. col. 2, 3, vers. Translatio Ecclesiæ; Rebuff. in praxi tit. de Trans. episc. n. 7; Lotter. de re benef. l. 1, q. 12, n. 6; Prances, de Eccl. Cathed. c. 7. n. 27, 28, 41, 42, et præsertim 70, 75; Respondit etiam Rota decis. 705, n. 12, p. 4, recent. tom. 3;* iterum, *Placentina Cathed. 22 Junii, 1703.*) It is also certain that such a change and transfer having been made, all the rights and all the qualities of cathedrality previously existing in the cathedral church from which the transfer is made, go over and thereafter belong to the church to which the transfer has been effected. (*Cf. Gloss. in cap. Privilegium, vers. Quod dic verum, de reg. jur. in 6°, Innocent. in cap. 2. n. 2; ibique Fagnan. n. 10, de Nov. oper. nunciat, et idem Innocent. in cap. 1, in princeip. vers. Si vero de uno, ne sede vacant; Grat.*

discept. 291, n. 1 et seq; Prances de Eccl. Cath. c. 7, n. 59, et seq; Rota, coram Seraph. decis. 1149, n. 16; Coram Pœn. decis. 117, n. 6, et decis. 163, n. 3; Coram Ludovis. decis. 665, n. 7; Coram Bich. decis. 995, n. 15; Coram Dunoy, decis. 196, n. 16, 17 par. 19 Recent; Placent. coram Molines, 22 Junii 1703.) This last decision specifically says that when the transfer of the bishop's chair is from one material church to another in the same city, no apostolic indult is required.

However the transfer does not affect the property rights of the two churches. The transfer of the bishop's chair from one church to another cannot alienate the property of the former cathedral in favor of the new one.

NOTE.—In England Catholic diocesan property is held by private individuals known as trustees, viz., the bishop of the diocese and four or five individuals chosen by him. Bishops, as such, are not recognized by the civil law, but only as individuals. Parish property is held also in the names of several individuals as trustees.

NOTE. 2.—Diocesan consultors are selected for a term of three years. They go out of office by limitation, unless the triennial term expires during a vacancy in the episcopal see. Attention should be paid to this point in the matter of alienating property. If a bishop is transferred by Brief dated before the triennial term expires, the consultors hold over, even though notice is received only later. But if the consultors' term expired before the date of the Brief of transfer and the bishop had neglected to select new consultors before the transfer, then the selecting of consultors devolves on the Metropolitan, who will follow the same method of selecting as the bishop should have followed. (*Cf. L.* 1. *t.* 10, *decret. De Supplenda negligentia praelatorum.*) From the exact date of transfer the bishop loses all jurisdiction. Similar is the case of the triennial term expiring before a bishop's death without a new selection. The old consultors are then no longer in office.

PART THIRD.

TRIALS AND PUNISHMENTS.

CHAPTER I.

PRELIMINARY INVESTIGATION, FORMS FOR MONITIONS, PRECEPT, JUDGE, AUDITOR.

328. The ordinary judge in all ecclesiastical trials is the bishop of the diocese or his vicar general. An actuary is required for each trial. The forms for appointing the vicar general and the actuary or notary as well as other officials are given in the first part of this work. Trials are of two kinds, criminal and civil. Many of the forms used in the criminal process are applicable also to the civil. Hence, following the late instruction "Cum magnopere" for the trial of criminal and disciplinary causes of ecclesiastics, we shall give first the forms needed in this

process, and then add those which are special to the civil process.

329. The instruction "Cum magnopere" says it is the duty of the bishop to see that discipline is preserved in the clergy, and lays down two kinds of remedies for that purpose, preventive and repressive. For inflicting the former only an extrajudicial process is required, but for the latter a summary judicial process. The preventive remedies are chiefly spiritual exercises, admonitions and the precept. But since a cleric may appeal or make recourse also from an extrajudicial grievance, it will be prudent for a bishop always to have in writing sufficient evidence to sustain the infliction even of preventive remedies. Hence the instruction says that before inflicting even preventive punishment a summary investigation and record should be made. This does not pertain to the fiscal procurator, but rather to the bishop himself or the vicar general, as father and ruler of the diocese, not as judge.

330. When a cleric has committed even a serious fault, if he repents, often the only punishment required is one of the preventive remedies. In fact a prudent bishop will abstain as long as possible from a regular judicial process and the repressive punishments, to prevent scandal and save the unfortunate clergyman. The practice of putting prominent men on trial without sufficient proof obtained in advance, cannot be too strongly denounced because of its great detriment to religion and to the person injured. For this reason to-day, no matter who makes the charges, the bishop is held responsible for every criminal trial, and it must be begun by him *ex officio*,

as the instruction clearly states. In making the extrajudicial investigation great prudence is required, so as not to stir up scandal, or injure anyone's reputation, for not unfrequently malicious charges and reports are sent to the bishop concerning priests. The bishop may speak to the accused priest paternally pending the extrajudicial investigation, but he cannot cite him to appear.

331. The admonitions may be made secretly by a registered letter or through some person, but a record of them should be kept, or again they may be made in a legal form served by the court messenger. They should contain no threat. Following is a form for the two paternal warnings:

"To the Rev. N. N. of N— in the diocese of N—. For your own sake and the good of religion We find it necessary, as your bishop, in a paternal manner to admonish you to practice sobriety and to cease frequenting places where liquor is sold and especially ——. We also call your attention to your obligation of celebrating with proper preparation mass on Sundays and holy days of obligation, so that the people of your mission may assist thereat. We hope this (second) admonition will be effective. Dated &c.
[L. S.] N. Bishop of N."

332. If even the second canonical warning is not effective, the ordinary through the curia will issue to the delinquent a legal and formal precept as to what he must do or avoid; and specific punishment must be threatened for disobedience. Following is a form for the canonical precept:

"N. Bishop of N. to Rev. N. N. rector of N. greeting. Twice have We with paternal interest admonished you, but without avail; and We now

formally enjoin on you that you practice sobriety and cease frequenting places where liquor is sold and especially ——. We also strictly enjoin on you not to neglect either personally or through another the celebrating, with proper preparation, of mass on Sundays and holy days of obligation, so that the people of your mission may assist thereat. Further We warn you that any and every disregard of this our precept will be punished by suspension, deprivation of the charge you now hold, and other canonical repressive remedies. In testimony whereof &c. Given &c.

[L. S.] N. N. Bishop of N.

N. N. Bishop's Chancellor."

"On this 31st day of May, A. D. 1898, the above precept was by me served on the Rev. N. N. mentioned therein who also received it in the presence of the Very Rev. N. N. vicar general (or in the presence of N. N. and N. N. as witnesses summoned for the purpose.)

N. N. Vicar General, or N. N. and N. N. witnesses ad hoc.

Ita est. N. N. Bishop's Chancellor."

333. This precept for validity must be served in writing. If the delinquent will appear in the chancery office it will be served on him by the chancellor in the presence of the vicar general or of two ecclesiastical or virtuous lay witnesses summoned for the purpose, who may be required under oath to keep secret the precept and its circumstances. A proper record as given above is made of the service by the chancellor, which is to be signed also by the vicar general or the two witnesses. This precept should be in duplicate copy, one for the delinquent, one to be retained in the chancery.

If the precept cannot be served in the chancery

office because the delinquent refuses to appear or if he cannot be found, the same method for serving it may be used as for a citation. Even the registered mail can be employed. (*Cf. Art. 14, Cum magnopere.*) The form for ordering a retreat as a preventive remedy is given below, n. 480, in the chapter on punishments.

334. Since the "Cum magnopere" was issued it is necessary, *as a rule*, to give the canonical admonitions and the formal precept and then a trial before *repressive* punishments may be inflicted, whether they be called correctional, medicinal or vindictive, which distinctions are rather logical than real. Where, however, the crime committed is of great enormity, and it is evident that the delinquent acted with malice prepense, or also where the greatness of the scandal given requires it, the criminal trial may be begun at once by the fiscal procurator filing his bill of complaint without the admonitions or formal precept having been given previously by the bishop. Such is the general law, as applied also by Art. XI of the "Cum magnopere." Further, when the bishop suspends *ex informata conscientia*, neither warning, precept nor trial need be given. But it is plain that in all such cases the bishop assumes a very grave additional responsibility. Again in the case of censures which are *a jure et latæ sententiæ*, no previous precept or monition is required, but only a citation to show cause why sentence should not be declared. A threat to a particular person by the ordinary, that unless he does a certain thing before a certain time he as delinquent will be ipso facto suspended from office, although a censure

latæ sententiæ ab homine is held by some canonists to be equivalent to a censure *a jure et latæ sententiæ*, in this much that the threat itself is a continual admonition. Therefore they say no further *warning* is required after the lapse of the allotted time, but only a citation to the delinquent to appear and show cause why a sentence declaratory of the censure should not be passed on him. Against such a personal threat, an appeal when admitted by the higher court, has a suspensive effect. However, on the other hand it is held that a bishop cannot even validly inflict by such special sentence a correctional punishment or censure to be incurred ipso facto for future crimes (*Cf. Smith's Elem. n. 2041*; *Rota, Enchir. pg. 277.*) The citation to show cause is to be issued at the instance of the fiscal procurator, who must submit judicial proof that the censure was incurred, i. e., that the crime was committed or that the required work was not performed. This in reality is the judicial process. (*Cf. Monacelli Tom. 3, t. 1, f. 1 et seq. Vide etiam, Reiffenstuel, l. 5, t. 39, n. 21, 23; De Angelis, h. tit. parag. 3*; *Engel, l. 5, tit. 39, n. 9, Novarrus, eodem tit. concil. 9, n. 4.*) These authors also hold that the denunciation or declaration of a censure laid down in law, or a personal threatened suspension as above, is null unless it is preceded by a citation to the delinquent to show cause why it should not be passed. (*Cf. Glossa Clement. 3, de censuris et Clement. 2, de pœnis. Walter, Canon Law, pg. 274.*) One exception is made: namely, when the fault and the contumacy of the unrepentant delinquent are notorious. This notoriety itself, however, must be shown to

exist and cannot be presumed. To omit a citation to show cause and to plead notoriety is a dangerous proceeding, for as said in *Cap. Consuluit 14, de Appell.*, "many things are called notorious which really are not such, and therefore when denied they must be proved." Consequently, when no citation is issued to the delinquent to show cause why a declaration of his censure *ipso facto* incurred, should not be passed, for the alleged reason that his contumacy is notorious, then under pain of nullity, a sentence declaratory of the notoriety of the contumacy must first be passed or at least be inserted in the sentence declaring the ipso facto suspension. (*Cf. Reiffenstuel, l. 5, t. 1, n. 264, 266, et alios ibi et communiter.*) In a late case no declaration of the notoriety of the contumacy was inserted in the sentence declaring a suspension which a bishop claimed was ipso facto incurred, but to hear which sentence he had neglected to cite the delinquent priest, claiming afterwards that the priest was notoriously contumacious. Because of the aforesaid neglect to show or at least in the sentence to state this alleged notorious contumacy, the sentence could not legally be sustained. Moreover, notoriety can never sufficiently establish the incorrigibleness of the notorious offender, since, even when a person has, e. g. publicly said that he will not obey the superior's warning, it is possible, nay presumable, that he may have done so from bravado or want of consideration. (*Cf. Smith Elem. n. 2054, Kober, der Kirkenbann, pg. 155.*)

335. The instruction "Cum magnopere" is silent on the process *ex notorio* and the process is so dangerous that it is rarely used to-day. In fact it seems

so discordant from our times and really so unnecessary that few bishops care to use it. If the church to-day wished the procedure *ex notorio* used generally, it would have mentioned the matter in the instruction just as it mentioned the one exception of the suspension *ex informata conscientia.* However, if the crime was committed openly before the judge sitting in court or a bishop making canonical visitation, it may be immediately punished *ex notorio.* Such notorious crimes, as well as contempt of court, mentioned below in n. 366, require no trial, but only an immediate declaration of the notoriety and a sentence. (*Cf. also n. 281-282 above.*) However, most modern canonists say that even in such cases a trial is required. (*Smith. Elem. n. 2054; Kober, der Kirkenbann, pg. 155.*)

For all other cases our authorized process under the instruction likely can be made short enough. Hence the Third Council of Baltimore, n. 310, says: "Let the bishops notice that except the one case of suspension *ex informata conscientia*, no repressive punishment should be inflicted unless a judicial process has preceded, so that even in causes which are called notorious, it is by all means much better to institute a summary process regarding the notoriety before punishment is inflicted." This advice applies even to crimes committed in the very presence of the bishop or judge out of court. (*See below, n. 437, and following for the process.*)

336. The instruction, in article 10, states that a criminal action may be instituted against a cleric either because without other fault he breaks the precept mentioned above *or* because of crimes *or* for

breaking church laws. The process is to be compiled summarily, but the rules of justice must be strictly followed. This compilation of the process and especially the taking of testimony may be quite burdensome. Hence, if the bishop and the vicar general, who are the ordinary judges of the diocese, prefer not to act as judge in a certain case, the bishop may delegate some cleric to act, and so also the vicar general if in his letters of appointment he has received this power. The judge delegate before acting must legitimize or show his appointment in public or before witnesses and a memorandum to this effect must be entered by the actuary of the trial, for which a form is given below. The appointment of a judge delegate must be made in writing. The same is true of an auditor appointed to take testimony.

337. Following is a form for appointing either a judge or an auditor in a criminal case:

"N. &c Bishop of N. to Rev. N. N. (insert the official title or position of the person appointed) health in the Lord:

The requirements of our office demand that not only by kind exhortation and preventive remedies shall We endeavor to prevent evil and remove scandal, but also that at times by more vigorous measures We shall recall delinquents to a sense of duty. Since therefore an official process is necessary because of information now before Us regarding the Rev. N. N. of the church of N— in N—, and since our many other duties will not permit Us personally to act as judge (or auditor) in the aforementioned case, We, knowing your prudence, knowledge of law, probity of character, do by these presents constitute you our judge delegate (or auditor) for this case of the Diocese of N. vs. Rev. N. N. charged

with —— (mention the crime or charges,) the documents in which matter are given you herewith; and We commit to you the right and power, having chosen, if you wish, a competent (auditor and) assessor, with our diocesan chancellor or other notary as the actuary for the case, of drawing up and completing a criminal process over the aforementioned person and charges even to the final sentence *inclusive* (or *exclusive*, if only an auditor is appointed; in which case add: and you will faithfully transmit to Us all the acts and your summary of the case that We may pronounce what shall be just.) For which purpose We delegate to you all the necessary and opportune power and faculties. Wherefore We command all and singular our subjects that they recognize and receive you as our judge delegate (auditor) and that in this case and matters pertaining thereto they obey you as ourselves, under the penalties constituted by ecclesiastical law against the rebellious and contumacious. In testimony &c. Given &c.

[L. S.] N. Bishop of N.
N. N. Bishop's Chancellor."

338. If the vicar general delegates, he must mention that he does so by virtue of the power he himself received so to do in his appointment. If the vicar capitular or administrator delegates, he makes the proper changes in addressing the person delegated. Following is a form for legitimizing or publishing the appointment of a judge delegate or auditor:

"We the undersigned heard read and saw with our own eyes the letters by which the Most Reverend Bishop of N. (vicar general) delegated as judge (auditor) the Rev N. N. &c in the criminal case of the Diocese of N. vs. Rev. N. N. In testimony

whereof witness our names this —— day of —— A. D. ——.

Signatures, N. N. and N. N.
N. N. Actuary."

The oath of office must of course be taken, a form for which is given in n. 60, page 57. This form may be used for any office by only changing the names.

339. There are various ways in which the bishop may have obtained the extrajudicial information on which he based his monitions and precept. As shown in the next chapter, some people may have filed charges to which they have sworn, or the newspapers may have contained reports which were verified by proper investigation. After preventive measures have been used, all this information is turned over to the fiscal procurator with an order of the bishop to proceed. The procurator will then draw the charges and present them to the curia. No one else can officially present charges, although any aggrieved person may file accusations with the bishop. Hence it is a grave duty on the part of the procurator to see that the testimony already at hand is sufficient to give at least half-full proof. The bishop should remember that a priest must have become defamed before a judicial process can be begun; otherwise the act of the bishop will be defamatory and illegal. The prosecutor is obliged to call the bishop's attention to this, and cannot file charges unless defamation has already occurred. For instance, one or two people know that a priest who enjoys a good reputation has been guilty of a secret crime, which in itself does not injure his flock. They report the matter to the bishop and swear to

it. In such a case the bishop may institute a summary investigation and may give a canonical warning to the priest, but he cannot place him on trial, for there is no ill-fame and a trial would be scandalous, as well as injurious. Hence great prudence is required in both bishop and fiscal procurator. The duty of the latter is to protect the innocent and prevent scandal as well as to satisfy justice. The form for his appointment is given in the first part of this book, in n. 81, page 75.

340. It may be well to remark that if the testimony on which the bishop based his paternal warnings and the precept, or in other words if his informative process before using preventive remedies, was conducted and gathered legally, as is always best, then this same testimony without re-examination may be used, after the procurator has filed his charges, in the process for the information of the curia before the citation is issued to the accused. Further, it may be used in the judicial process when legalized and accepted by the accused, without even then being repeated, unless a demand for repetition is made. The testimony when taken in the first instance should therefore be taken legally before the vicar general or a delegate and an ecclesiastical notary, signed by the sworn witnesses, and all marked and drawn regularly, the forms for which will be given below. Much time can thus be saved, and useless repetitions avoided. However it should be remembered that more proof is required for convicting a cleric on trial than will suffice for giving warnings and the precept. For imposing preventive remedies the bishop must have moral but not legal certainty

of the guilt of the accused. For the filing of the criminal libellus the procurator should have at least legal half-full proof. For the citation of the accused the judge should have *prima facie* legal full proof, such that unless overthrown must convict the accused. Finally for conviction of the accused the judge must have legal full proof remaining after the defense has tried to off-set it.

It should not be overlooked that prescription may be urged effectually against a criminal action for certain crimes. (*See page 493 below.*) Hence care is necessary lest a process otherwise legal become null and ineffectual through lapse of time since the crime was committed.

CHAPTER II.

FORMS FOR THE SUMMARY INVESTIGATION BEFORE PREVENTIVE REMEDIES.

341. As was said in the preceding numbers the information on which the bishop bases his paternal preventive remedies may be obtained from various sources. For safety a summary investigation should be made by the vicar general or a delegate accompanied by a notary. A prudent investigation may quietly be made, when public fame or certain persons charge a cleric with crime, and sometimes the vicar general may begin an investigation *ex officio* when the crime of a cleric becomes known through another trial or when a criminal exception is taken and proved against him.

342. The following form for opening the acts may be used when a summary investigation is made because of public fame:

"Diocese of N— vs. Rev. N. N.	Diocese of N— Criminal Department.

In the name of the Lord, amen. This is a *summary investigation* which the V. Rev. N. N. vicar general of the Most Rev. Bishop of N— intends to institute *ex officio* against Rev. N. N. a priest. For since it has come to the ears of the aforesaid vicar general that there exists common fame even among grave and not malevolent persons, that the Rev. N.

N. has fallen into several faults and crimes, namely, 1° That he drinks to excess; 2° that he is therefore not able and does not attend to his parochial duties; 3° that he loudly and openly curses people by the holy name of God; 4° that he struck and seriously wounded N. N. (or if only one thing is charged mention that); therefore the said vicar general wishing to fulfill his duty decided to make a summary investigation of these matters. Wherefore he summoned me the undersigned notary to his room (or other place) where he erected his tribunal, and deputed me as actuary for the case. These things were done at —— this —— day of —— A. D. ——.

Signed: N. N. Vicar General.
N. N. Actuary."

The form for examining witnesses to prove ill-fame is given below in n. 373.

343. When a person of good reputation and to whom no exception can be taken testifies to the bishop, making his visitation and instituting a general investigation, that, for instance, he has himself seen a cleric frequently enter and leave forbidden places, such a half-full proof may be a reason for a summary investigation. The same may be said when a responsible person denounces a priest in writing, and testifies to the fact. The form for opening the investigation in such case is the same as the above except to change the source of information. In all such cases the bishop should first investigate whether there is ill-fame, in order to know how to proceed.

344. When by criminal exception to a cleric filed and proved in another case, or by mention incidentally made in another case of a crime committed by a cleric, a crime becomes known to the bishop or

vicar general, a summary investigation should be made. The judicial process in which the crime was divulged makes proof of ill-fame. The following may be used as the form for opening when a crime becomes known through another trial:

"In the name of the Lord, amen. Since in the process instituted against N. N. concerning (here mention the suit) a certain N. N., who was a witness judicially examined, (or the defendant) confessed in his deposition that he had committed (mention the crime confessed); therefore the V. Rev. N. N., vicar general, wishing to fulfill his duty decided and decides to proceed *ex officio* to the investigation and punishment of the said crime in accordance with the sacred canons. Wherefore &c. These things were done in ——, this —— day of —— A. D. 18 —.

Signed, N. N. Vicar General.
N. N. Actuary."

The following may be used as a form for opening when a crime becomes known through a criminal exception:

"In the name of the Lord, amen. Since it is the duty of a judge to coerce criminals by punishing them, lest their bad example and immunity from punishment may induce others to commit similar crimes; the V. Rev. N. N., vicar general of the Most Rev. Bishop N—, knowing that N. N. has committed several serious faults, as was proved in the exception process brought against him at the instance of N. N. as in the acts, decreed, as he also by these presents decrees, to institute a summary investigation or process against the said N. N., to examine witnesses and to do other things as required by law even to a definitive sentence. Wherefore, &c. These things were done in —— this —— day of —— A. D. 18—.

I, N. N. Vicar General.
I, N. N. Actuary."

345. The vicar general with the actuary will then proceed with the summary investigation. This should follow in effect the lines laid down for the judicial process. Hence witnesses may be examined regarding the existence of common ill-fame, and if the fault or crime left permanent marks, such for instance as the striking of N. N. by the priest mentioned in n. 342, then a visitation of the *corpus delicti* should be made and properly recorded. Witnesses may then be cited and examined regarding the crimes charged, and their testimony noted. Should the vicar-general be unable to go to a certain place to examine witnesses a commission may be delegated for the purpose by the bishop or by the vicar general if his appointment gives him that authority. If a special notary is also appointed for the commissioner then only the bishop can appoint him. Forms for these acts are the same as those used in the judicial process which will be given below in chapters IV and following.

CHAPTER III.

FORMS FOR CRIMINAL LIBELLUS AND FOR RECORDING THE ACTS.

346. When the fiscal procurator is certain of the necessity of filing charges he may use the following form for a criminal libellus:

"Diocese of N— vs. Rev. N. N.	Diocese of N— Criminal Department.

Bill of Charges.

Comes now the Rev. P. Q., fiscal procurator of the diocese of N— and before the V. Rev. N. N. vicar general and ordinary judge, files *ex officio* the following charges and accuses the Rev. N. N. rector of the church of St. A— in X— of being scandalous in conduct, of neglecting to say mass on Sundays so that the people of his parish may assist thereat, of celebrating mass without keeping the fast required as a preparation, of breaking the precept imposed upon him regarding these matters by the Most Rev. B. C., bishop of this diocese.

The fiscal procurator charges: 1° Scandalous conduct and specifies: a) The Rev. N. N. frequents saloons in X— and drinks therein, much to the scandal of his parishioners. b) The Rev. N. N. was seen drunk on the streets of X— and particularly on or about the 10th day of May A. D. —, and also on or about the 15th day of June, A. D.—. c) Because of excessive drink he was unfit and unable to attend an urgent sick call in X— on the 11th day of June

A. D. 1898, and in consequence the sick person died without the sacraments.

2° Not celebrating mass on Sundays so that the parishioners may assist thereat, and specifies: a) On Sunday, the 5th day of June, A. D. 1898, and again on Sunday, the 12th day of June, A. D. 1898, the Rev. N. N. neither said mass nor had mass celebrated in the church of X—, on which days mass should have been said.

3° Breaking the ecclesiastical fast required before celebrating mass and he specifies: a) On the morning of the 14th day of June, A. D. 1898, the Rev. N. N. publicly said mass in X— after eating and drinking at about 2 o'clock that morning in the presence of five or six persons.

4° The fiscal procurator charges the Rev. N. N. with breaking in X— during the month of —— A. D. ——, the formal precept imposed upon him on the 31st day of May, A. D. 1898, by the Most Reverend Bishop.

To sustain which charges legally the fiscal procurator is ready; and he therefore prays that this bill be accepted, that proceedings be had as required by law and punishment be inflicted accordingly. Hoc et omni meliori modo.

Dated N— June 21, 1898.

P. Q. Fiscal Procurator."

The fiscal procurator should not attach the names of witnesses to his charges. He may hand a schedule of proofs to the judge, but it should not be put in the acts at this stage.

347. After the fiscal procurator has officially filed his charges, the judge, either ordinary or delegated, will summon the diocesan chancellor or other notary, who as actuary for the case may begin the acts with this form for recording the acts or beginning compilatio processus:

"Diocese of N— vs. Rev. N. N. | Diocese of N— Criminal Department.

In the name of the Lord, amen. This is a *criminal process* which at the instance of the Rev. P. Q. fiscal procurator of the diocese of N— the V. Rev. N. N., vicar general of the Most Rev. Bishop of N— intends to formulate. For since the said fiscal procurator appeared and officially offered a bill of charges which begins 'Diocese of N— vs. Rev. N. N. Bill of Charges' and ends with his signature and the date, 'June 21, 1898,' and which bill is found below under the title 'Documents no —,' the aforesaid V. Rev. vicar general wishing to proceed according to law, summoned me, an ecclesiastical notary, and deputed me as actuary for the case. These things were done in —— this —— day of —— A. D. ——.

Signed, N. Vicar General.
N. Actuary."

348. If the notary is specially created for the case he should insert the document of his creation among the records and while using the above form for beginning the process will insert these words after "the aforesaid vicar general:"

"Wishing to proceed according to law obtained from the Most Rev. Bishop N— that a notary be created who could be made actuary for this case. Wherefore the aforesaid bishop before witnesses created me a notary public, having administered to me the oath of fidelity in office which I at once took, as appears in the documents of this case no.—; and the V. Rev. vicar general deputed me actuary for this case. These things were done &c as above."

The form for creating a notary is given in the first part of this work, page 64.

349. When a delegate judge or an auditor has

been appointed, for which the forms are given above in n. 337-338, then the actuary will thus begin:

"Diocese of N— vs. Rev. N. N.	Diocese of N— Criminal Department.

In the name of the Lord, amen. This is a criminal process which the Rev. N. N. (mention the delegate's title, such as consultor) as judge delegate (or auditor) at the instance of. Rev. P. Q. the fiscal procurator of the diocese, intends to formulate. For since the Rev. P. Q., the said fiscal procurator, appeared before the vicar general of the Most Rev. Bishop of N— and officially offered a bill of charges which begins: 'Diocese of N— vs. Rev. N. N. Bill of charges' and ends with his signature and the date 'June 21, 1898,' and which bill is found below under the title 'Documents no. —,' the aforesaid V. Rev. vicar general (or the Most Rev. Bishop at the request of) busy with other work, therefore delegated his jurisdiction over this case (for the compilation of the process) to Rev. N. O. (diocesan consultor.) The said delegated consultor (or other official) went to X— and there before all else legalized his appointment by having the letters patent of his delegated jurisdiction read before M— and Y— as witnesses, as appears below under the head of Documents no.— The judge delegate (or auditor) wishing to proceed &c (as in previous form.) Dated &c.

N. O. Judge Delegate (or auditor.)

N. Actuary."

CHAPTER IV.

FORMS FOR VISITING CORPUS DELICTI, FOR INTRODUCING DOCUMENTS.

350. When the crime, which is being investigated, either summarily or judicially, is of a permanent character, i. e., when traces of it are left, a visitation of the *corpus delicti* should be made, since this constitutes basic testimony. This visitation should be made even before investigation is made of the *fama publica*, when the vicar general bases his summary investigation on that foundation. If after the precept is given there is a renewal of the *corpus delicti*, another visitation should be made. For instance a formal precept has been given a cleric to cease becoming intoxicated. Some time after receiving this precept he is reported to have delirium tremens. This condition might constitute a *corpus delicti*; though to make a visitation in such or similar cases, experts might safer be employed.

351. When the vicar general, judge delegate or auditor makes the visit to the *corpus delicti*, the acts may be thus written.

"After this the Rev. N. O., the judge (auditor) wishing to proceed according to law, accompanied by me and two witnesses, specially summoned for the purpose, went to X— in order to visit the *corpus delicti* mentioned in number — of the charges under

this investigation which was instituted *ex officio* because of common fame (or insert proper reference to acts in the case.) And it was seen and found that N. N. was badly injured; for there was a wound on the right side of his face &c (describe it) on account of which the said N. N. was confined to his room. (Or) And it was seen and found that the said Rev. N. N. was in a state of delirium, in which he acted irrationally, claiming to see snakes and such like and constantly calling for liquor (describe condition) which state the physicians present as witnesses said was delirium caused by excessive drink. These things were done in — the — day of — A. D. —.

Signed, N. O. Judge.

I, M. M. was present as witness. I, G. H. was present as witness. N. N. Actuary."

352. If the judge himself cannot make such a visit he may depute the actuary with the two witnesses, and the acts may then be written:

"After this, the Reverend Judge wishing to proceed according to law, deputed me with two witnesses, namely M. M. and G. H. to visit the *corpus delicti* mentioned above in ——. Hence, accompanied by the said witness I went to —— and there it was seen and found that" &c as above. Dated and signed by the two witnesses and the actuary."

If for some reason it is impossible to visit the *corpus delicti*, for instance, the injured person will not submit to it, as in the case of an outraged woman, then an entry should be made in the acts regarding the matter and proceedings continued as if no traces of the crime were left:

"Although the said crime mentioned above in number — is of a permanent character and therefore would require a visitation of the *corpus delicti*, still because the aforesaid injured person, D. E. will not

consent to an examination, and there is no way to compel it, the V. Rev. N. N. vicar general (or judge or auditor) pronounced that the visitation of the *corpus delicti*, since it is impossible, is not required in the case, and it being omitted, that the proceedings be continued. Done &c. Signed &c."

353. It will be necessary to introduce into the criminal process the canonical admonitions and the precept as well as what testimony is deemed suitable from that gathered in legal form by the bishop before inflicting preventive punishments. A copy also of the decree inflicting these punishments, paternally administered, may be introduced from the summary investigation into the judicial process. All this should be done before the accused is cited, and even before witnesses are examined. The following form may be used for introducing such documents or records:

"After this, the V. Rev. Judge (or auditor) wishing to proceed with safety and according to law, at the instance of the fiscal procurator who produced them, had read the canonical monitions which are filed with the documents of this case and marked no.—, and the formal precept also filed and marked no.—; and it appearing that these documents are authentic, and that the said monitions and precept were actually given to the said Rev. N. N., the V. Rev. Judge ordered that they be admitted, *si et in quantum*, and that they be made part of the process. Done &c. Signed &c, as above."

A similar form may be used for introducing other official records, and also testimony taken by commissioners either for the informative or judicial process. The form for thus taking testimony is given in chapter six below.

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CHAPTER V.

FORMS FOR CITATION OF WITNESSES.

354. All witnesses in a criminal case, especially for the prosecution, should be cited either by letters or formal citation. When they are cited to give testimony for a summary investigation the name of the accused should not be mentioned in the citation. When cited after a citation has been issued to the accused, then the process in which they are to testify may be mentioned. Article 17 of the "Cum magnopere" enacts that the witnesses must be examined separately. Article 18 enacts that all witnesses before testifying must take an oath to tell the truth, and also to keep secret the matter on which they testified. This secrecy must be observed until the legal publication of the testimony. It is also enacted that all others connected with formulating the process must take a similar oath.

355. Article 19 authorizes the employment of a commissioner to take the testimony of witnesses in distant places within the diocese, and their diocesan authority if they be in another diocese, and says a summary of the facts of the case must be transmitted to the commissioner along with the questions proposed for the witness to answer. Article 20 enacts that if witnesses who should be examined cannot be examined, either because it is not lawful or proper to cite them, or because when cited they refuse to come,

then a note should be made of this in the acts, and their testimony be supplied by other witnesses who know the matter by hearsay or otherwise. But it should be remarked that the instruction does not mention any punishment for witnesses who refuse to testify. It is doubtful whether a witness can be punished for refusing to testify *against* an accused cleric, in a criminal or disciplinary case. Custom, however, seems to have established the practice of punishing those who refuse to testify in favor of an accused person or who contemn the court. But it should be remembered that if an auditor has charge of the process, he himself cannot inflict censures on a recalcitrant witness, but must turn the matter over to the vicar general, unless in his delegation this power of compelling was specially delegated.

356. Following is a form for calling a witness by private letters, especially for a summary investigation:

"To N. N.

Dear Sir: Since your presence is necessary in a certain cause which is now under investigation by us, in which you can give information on certain points, we trust you will not be incommoded by being cited by us to appear before the diocesan curia in the episcopal residence (or other place) on the 18th day of June next at 9 o'clock a. m. Meanwhile may God have you in his keeping. Given in the episcopal chancery this 13th day of June A. D. 1898.

N. N. Vicar General."

357. Following is a form for judicially citing a witness:

"We, N. N. the vicar general of the Most Reverend Bishop of N—, require, warn and cite N. N.

(under pain of suspension or without any threatened punishment, as the judge sees fit) to appear on the — day of this month personally in the episcopal curia before us, the vicar general, there to be sworn and to depose for the information of the curia in a certain cause now being tried before the said curia; (or if the accused is already cited, then insert "in the cause now being tried in the said curia against N. N. as in the acts.") And we command that our public messenger N. N. (or other person stated) shall serve this citation on the aforesaid witness either personally, or at his residence or by registered mail. Given at —— this —— day &c.

N. Vicar General.
N. Actuary."

358. The following is a form for citing a witness so that he may be punished as contumacious if he refuses to appear:

"We, N. N., the vicar general of the Most Rev. Bishop of N— require, warn and cite N. N. (under pain of fine or suspension, or without threat) to appear on the —— day of this month personally in the episcopal curia before us, the vicar general, there to be sworn and to depose for the information of the curia in a certain cause now being tried before the said curia; (or mention the name of the accused if he has been cited.) But wishing that this notice of citation shall have the force of a canonical warning, we therefore assign six days from the day on which this notice shall be served on him, of which two shall be for the first term, two for the second and two for the third and peremptory term; within which, if he does not appear before us, unless detained by a legitimate cause, let him know that we shall proceed against him as contumacious, according to the forms of law, without any other citation. Given &c.

N. Vicar General.
N. Actuary."

If the witness does not appear, then a declaration of contumacy should be made by the judge and canonical monition given, as below in n. 360, before censures are inflicted. (*Cf. Conc. Trent, sess. 25, c. 3, de ref.*)

359. Article 14 of the "Cum magnopere" enacts that all notices and citations shall absolutely be given in writing, i. e., under pain of nullity. When the person, public or private, charged with the serving of the citation has served it, he must under oath make his return of service to the actuary. If he cannot serve the citation he must make a return to that effect. Hence each citation should be in duplicate, one for the witness, the other to be retained by the messenger and returned to the actuary who will insert it in the acts with the following entry:

"Since M. P. the messenger (or other person stated) of this curia received a mandate from the V. Rev. Vicar general to cite X. Y. personally, or in his house, or by registered letter, he having now returned to me the actuary, and being first sworn, made report that on — (mention time and place) he served the citation to him (mention in what way) and he presented a copy of it for the acts, which is filed and marked no. —. These things were done in the episcopal chancery this —— day of —— A. D. ——. I, M. P., the messenger of the episcopal curia, affirm as above. N. N. Actuary."

The actuary will enter in the acts the failure to serve the citation, changing the above form where needed. If the service was by registered mail, the messenger will file the postal precept with his return of service.

360. For the purpose of proceeding against a con-

tumacious witness, following is a declaration of contumacy and a form for a warning citation to a witness equivalent to three:

"We, N. N. the vicar general of the Most Rev. Bishop of N—, since it appears that X. Y. a witness cited personally (or state how) to appear before us personally (or before Rev. L. K. auditor for this curia) did neither appear on the appointed day nor excuse his absence through a procurator (or refused to come &c.;) we, therefore, intending to proceed against such contumacy in accordance with law, by way of warning cite the aforesaid X. Y. to appear before us and show cause why he should not be punished for contempt, within thirty days from the date of these presents; of which days we assign ten for the first, ten for the second and ten for the third and peremptory term. Therefore if he does not appear before the said peremptory term has elapsed, unless legitimately impeded, let him know that we shall proceed against him as contumacious without any further warning. Given at &c.

N. Actuary. N. Vicar General."

361. The actuary may enter the above in the acts in these words:

"Since X. Y. who, on the order of the V. Rev. N. N., vicar general (or auditor) was cited to appear and testify in this case, did not appear on the required day (or told the messenger he would not come &c.:) therefore the said V. Rev. Vicar general ordered proceedings accorded to law against such contumacy and commanded that a monitorial citation, peremptory and equivalent to three, be served on the said X. Y. (or at his house, or by registered mail) by the court messenger (or other person specified) of which the following is the tenor: (Insert monition as above.) Therefore the aforesaid messenger (or other specified person) after he had ful-

filled his orders, returned to me the actuary and on oath reported (either that the aforesaid X. Y. thus cited said &c or reported) that on the — day of — A. D. — he delivered the citation, of which the above is a copy, to X. Y. personally (or at his house or by registered mail.)

These things were done in —— this —— day of —— A. D. ——. I, M. P. messenger of the episcopal curia affirm as above. I, N. N. Actuary."

362. Form for declaring sentence against a contumacious witness:

"Since X. Y. was cited to appear before us by a peremptory warning having the force of a triple one, (see n. 360 above) and dated the — day of — A. D.— and since he by contemning our orders has become and is contumacious after the aforesaid warning; therefore to compel him to show us proper obedience, by these writings we lodge against him the sentence of suspension *ab officio* (or a fine of — dollars;) by which he shall remain inflicted until he appears before us and by obeying us, merits the benefit of absolution. And that all may know this sentence, we order it published by affixing it in opportune places. Given &c.

N. N. Vicar General.
N. N. Actuary."

363. The actuary will enter the above sentence in the acts using about the same form with proper changes, as given above in n. 361, for entering the monitory citation.

The actuary will then make this further entry about the execution of the sentence:

"Therefore for the execution of the foregoing sentence, which was read in a loud and intelligible voice, as is the custom, by the V. Rev. N. N., the vicar general, seated at his tribunal, the court messenger

M. P. on the order of the V. Rev. Vicar general received two copies of the said sentence to be affixed to the doors of the episcopal chancery (or other customary places) which same he reported on oath that he had thereunto affixed. These things were done in — this — day of — A. D. —. I, M. P. messenger of the episcopal curia affirm as above.

I, N. N. Actuary."

364. Form for absolving a witness returned from contumacy:

"Before the V. Rev. N. N., vicar general of the Most Rev. Bishop N., came finally X. Y. who, as is mentioned above, was suspended (or fined) for contumacy; and he said he repented of his contumacy in not obeying the orders and citations given him, and that he is prepared to appear as often as called in the future, and obey the V. Rev. Vicar general, and meanwhile he has begged to be absolved from the censure (fine) lodged against him. Therefore the aforesaid V. Rev. Vicar general, after giving an opportune serious warning, before the witnesses undersigned specially called for the purpose, absolved him in the usual manner. These things were done (place and date.) I, X. Y. have asked and promised as above. I, J. K. was a witness. I, P. Q. was a witness.

I, N. N. Vicar General.
I, N. N. Actuary."

365. The actuary may then enter in the acts the following before the examination of the absolved witness:

"But when the said X. Y. had been absolved from the censure, as stated above, the V. Rev. Vicar general called him to the curia, where he offered him, the said X. Y., the oath of verity and secrecy which he took in the accustomed way. Afterwards being

interrogated he replied as follows: (Giving his examination.)

When a witness comes into court, after being warned but before being censured, the acts may read:

"When C. D. a witness, who had refused to obey the citations, as above, but had not yet been censured, returned to a better disposition and sent word to the V. Rev. Vicar general asking pardon and promising obedience, he the V. Rev. Vicar general called him to the curia, where the said witness having taken the oath in the usual way, was interrogated and replied as follows."

366. During examination it may be necessary to use this form for punishing an irreverent witness:

"Later A. B. was called as a witness, who being ordered to take the oath and reply to questions, wished neither to make oath nor to reply; but with contempt did or said (mention what.) Whereupon the V. Rev. Vicar general kindly admonished him, and when because of this kindness the said A. B. became worse, he severely rebuked him. The witness nevertheless persisting in his pertinacity and contempt, the V. Rev. Vicar general thought best to use the remedies of law, and therefore decreed as follows:

"Since A. B. called as a witness and ordered to take the oath and reply to questions, openly refused to obey, and although once admonished and again rebuked, still persisted in his pertinacity; therefore by the present order we, the vicar general, decree that the said A. B. shall remain subject to the censure of suspension (excommunication) until he repents and obeys our commands. Given (place and date.)

N. N. Vicar General.

N. N. Actuary."

367. The form for absolving from the censure of suspension inflicted for contumacy, as above, may be:

"Absolvo te a vinculo suspensionis in quam incurristi ob causam contumaciæ et restituo te pristinæ executioni tuorum ordinum vel officiorum."

For absolving from the excommunication:

"Absolvo te a vinculo excommunicationis in quam incurristi proper contumaciam et restituo te sacramentis ecclesiæ et fidelium communioni. In nomine Patris &c."

These forms of absolution are not strictly necessary; since the words "absolvo te a suspensione," or other censure, are held sufficient. When the censure has been publicly declared, it is advisable to use the form of absolution given in the Roman Ritual for absolution in *foro externo.*

In the above forms three terms of ten days each are given; but after the "Cum magnopere" it seems only two terms or twenty days are necessary. Moreover the two monitions to show cause may be combined into one peremptory citation, if mention is made of such fact, as is done above, in the citation.

CHAPTER VI.

COMMISSORIAL AND REMISSORIAL LETTERS FOR EXAMINING WITNESSES.

368. When a witness is to be examined at a distance from the court but in the diocese the bishop, or the vicar general, as stated in n. 335, will appoint a commissioner for that purpose. This is a form for appointing a commissioner to take testimony:

"N. Bishop of N., to our beloved son in Christ, Rev. C. R. rector of the church of St. C. in M. health and benediction. Since it is necessary for Us to examine A. K. for a certain cause which is being tried before Us, and since for good reasons We judge that it is not advisable that the said A. K. be summoned to our tribunal, We therefore by these presents commit to you and enjoin that, having taken for actuary N. N. a notary public, (or, whom for this case by these presents We create a notary and whose oath of office you will receive in the usual manner) you go to the said A. K. (or call him before you) and in the presence of the said notary you examine him on the points mentioned below. But We order the said A. K. under a formal precept to recognize you as our commissioner delegated to take the aforesaid examination and We command that he assist and obey you in all things for this purpose. The points on which the said A. K. is to be questioned are: 1° &c. (The several questions are to be sent and put to A. K. just as if he were examined in the curia.) Enclosed is also a summary statement of the case on

trial; which together with the questions properly answered, signed and sealed you will return to Us as soon as possible. Given &c.

N. Bishop of N.
N. N. Actuary."

369. Form for executing the commission to examine a witness:

In the name of the Lord, amen. Since the Rev. C. R., rector of the church of M—, received certain letters from the Most Rev. bishop of this diocese, of the following tenor (insert the commissorial letters;) therefore the aforesaid Rev. C. R. wishing to execute the aforesaid letters with all possible promptness, had me, the undersigned, called to his house, and published me a notary created by episcopal authority in the presence of the undersigned witnesses, and administered the oath which I took for the purpose of being a legitimate secretary to him in this cause. These things were done at — this — day of — A. D. —. I, C. R. delegated commissioner. I, J. S. was a witness. I, N. N. was a witness.

I. N. N. Actuary."

"Consequently the aforesaid A. K. was called, and before me, after having taken the oath, was questioned by the Rev. C. R. the delegated commissioner, and he replied as follows: (Give questions and answers in detail. Then conclude as in all examinations of witnesses with the clause) "which being had and accepted, if and as much as is lawful, at the command of the Rev. delegated commissioner, I read to the witness his deposition, which he, not wishing to change, was ordered to sign, with the formal precept under oath to keep secret the contents thereof. These things were done in — this — day of — A. D. —.

Signed, C. R. Witness.
C. R. Commissioner Delegated. N. N. Actuary."

If several witnesses are to be examined, the same method is persued for each and when the work is completed, the return is made to the bishop.

370. When a witness is to be examined in the diocese of another bishop, remissorial letters, containing a summary statement of the case and the questions on which it is desired to have the testimony of the witnesses, are sent to the bishop or vicar general of that diocese, and he then, according to art. 19 of "Cum magnopere," will have the witness examined and will return the testimony. The bishop who receives the letters will appoint a competent notary for the examination. The acts of the case will read:

"After this, when the V. Rev. Vicar general found it necessary that N. N. be examined as a witness and his presence could not be had because he lives in the diocese of N— he decreed that remissorial letters should be sent to the V. Rev. D. E. vicar general and ordinary judge of that diocese. Therefore letters were sent him of the following tenor:

"Very Rev. Sir:—Since it is necessary for me to have the testimony of a certain N. N., living in the diocese of N—in the case of (mention the case) which is now on trial before me, and since you are known to be ordinary judge in the said diocese; I deem it well to ask your help. Wherefore, I beg you to have the aforesaid N. N. appear before you, or your delegate, and have him examined on oath before a properly constituted notary who will write down his testimony; and return his deposition properly attested to me. I enclose a summary of the case and points on which questions are to be asked, which are the following: 1º &c. (Give summary and questions.) Meanwhile offering my services in similar cases I

trust God may have you in his holy keeping. Given at —. Date —.

N. N. Vicar General.
N. N. Actuary."

371. The judge who has received the remissorial letters will execute them as follows:

"In the name of the Lord, amen. Since the V. Rev. D. E. vicar general of the Most Rev. Bishop N. has received from the V. Rev. N. N. vicar general and ordinary judge in the diocese of N— certain remissorial letters of the following tenor: (give contents); therefore the aforesaid V. Rev. D. E., vicar general, decreed to order them executed according to law. Wherefore calling me, the undersigned actuary of the episcopal curia, he ordered the requested examination to be held. These things were done at — this — day of — A. D. —.

D. E. Vicar General.
N. Actuary."

"In consequence N. N. was called and being duly sworn was questioned by the V. Rev. D. E., vicar general and being asked —— he replied ——."

The examination should be closed as above in n. 369. The original acts will then be sealed and sent to the vicar general who requested that the witnesses be examined.

CHAPTER VII.

FORMS FOR EXAMINING WITNESSES.

372. If the bishop proceeds against a cleric because some one lodged a complaint, it is absolutely necessary for the bishop to institute a summary investigation before even paternal punishments are inflicted and before he may presume to cite the cleric for trial. If the bishop proceeds *ex officio* against the cleric because of public ill-fame and rumors which have come not once but often to his ears, then he must first have legal proof of the ill-fame. For safety in every criminal process, no matter how it starts, the bishop should first obtain proof of the ill-fame of the accused, for otherwise an appeal might be made and reversal might occur. The ill-fame required by law is such that starts from honest, not malevolent persons; and which, moreover, has come not once but often to the ears of the superior. (*Cf. c. Qualiter et quando.*) This ill-fame must be proved to exist by the testimony of at least two competent witnesses, who must testify not only that the accused is in ill-fame before the public, but must state the names of persons who suspect him. From this it can be seen whether the persons are malevolent or trustworthy, enemies or unprejudiced.

373. This examination regarding ill-fame must be made *ex officio*, and following is a form for entering in the acts the judicial inquiry regarding ill-fame:

"In consequence the same V. Rev. Vicar general cited to appear before him in — on the — day of — A. D. —, John N. and James N. witnesses called *ex officio*. And when on the appointed day John N. appeared and took the oath to tell the truth he replied as follows:

To general questions:

1. Asked what is his name? He replied, John N.
2. Asked his age? He replied, 30 years.
3. Asked where he lives and for how long? He replied ——.
4. Asked what business he is in? He replied ——.

These and similar general questions are always to be asked even though the witness is well known. They are for the record and the higher court in case of appeal.

To special questions:

1. Asked whether the people connected with the church in N. live good lives, or whether evil reports exist? He replied, the reports about Rev. N. are not the best.
2. Asked what reports? He replied, people say he drinks hard, curses and quarrels.
3. Asked who say so? He replied, it is common talk in town.
4. Asked of whom he heard this? He replied, I heard it from Andrew N. the post-master, Matthew Q. the butcher, Luke S. the lawyer.
5. Asked whether he knows or heard that these persons are enemies of Rev. N.? He replied, I think they are not enemies.
6. Asked what was the occasion and from whom this ill-fame started? He replied, they saw Rev. N. drunk in a saloon and we all knew he did not say mass on Sunday.
7. Asked how long this report is around? He replied, this last is about six weeks old, but other things happened before.

After the examination, the actuary will read his

deposition to the witness, so that he can add or cut out or change parts if he wishes. Then the witness will sign the deposition and will be instructed to keep secret the whole matter. Then the following is inserted in the acts:

"Which deposition being made and accepted, if and as much as allowed by law, at the order of the V. Rev. Vicar General I read his deposition to the aforesaid witness, which, not wishing to change, he was ordered to sign and did sign, and he was instructed to keep silence on the matter of the examination. These things were done at — the — day of— A. D.—. N. Vicar General.
I, John N. Witness. N. N. Actuary."

374. In the same way the witness James N. is to be examined, and if the testimony of both agrees, or if after further examination the vicar general or judge finds that ill-fame exists, he will declare it in these or similar words: "We judge that ill-fame exists regarding Rev. N. and we wish to further proceed against him according to law." The actuary will record it:

"Considering the depositions of the aforesaid witnesses the V. Rev. Vicar general (judge) pronounced that ill-fame is shown and he decreed to further proceed according to law against the said Rev. N. as defamed. These things were done at — this — &c.
I, N. Vicar General. I, N. Actuary."

375. If the ill-fame is not shown or if it appears to have been started by enemies or malevolent persons, the judge will so pronounce and add that no further proceedings will be taken. After taking testimony some decision must be given. The actuary will make the record:

"Considering the depositions of the witnesses, the V. Rev. Vicar general (judge) recognizing that the evil reports had their origin from enemies (or factionaries or garrulous persons or that the ill-fame is not proved) and that Rev. N. N. is not defamed before just and prudent men, pronounced that ill-fame is not shown and therefore on that account no further proceedings will be had. These things were done at —— &c.

N. N. Judge.
N. N. Actuary."

376. After the declaration of ill-fame the vicar general (judge) will proceed as mentioned above in n. 374. The acts may be written thus:

"Considering that ill-fame exists against Rev. N. N. and considering also the charges and complaints made by responsible persons (omit this latter if complaints are not introduced into process), the V. Rev. Vicar general determined and by this decree orders further proceedings to be had, by investigating the accused through the examination of witnesses and doing other things prescribed by law. In consequence he ordered cited the following witnesses &c. These things were done at — this — day of — A. D. —.

N. N. Vicar General.
N. Actuary."

377. The citations having been issued and served as stated in nos. 356-357 above, and the records being made of the same, on the appointed day the witnesses are examined and the acts may read:

"In consequence of citation, the witness Andrew N. appeared on the — day of — A. D. — and being duly sworn deposed and said:
To general questions:
1. Asked his name? He said, Andrew N.
2. Asked his age? He replied, 42 years.

3. Asked where he lives and for how long? He replied, in X for 20 years.

4. Asked his occupation? He replied, post-master.

5. Asked whether married? He replied, yes, and have family of three children.

6. Asked what parish he belongs to? He replied, St. Ann's.

(These and similar general questions should be asked of each witness and answers recorded in the acts.)

To special questions:

(Beginning with article 1° "that Rev. N. N. drinks to excess," as charged in *ex officio* complaint by vicar general now under investigation, mentioned in n. 342 above. But this article should *not* be read to the witness, nor should any *leading* question be put under pain of nullity of the deposition. Hence questions must only be put which gradually lead to the articles to be proved.)

7. Asked you say you live in X, what church do you attend? He replied, St. Ann's.

8. Asked who is the rector of St. Ann's? He replied, N. N.

9. Asked does Rev. N. N. say mass every day? He replied, I think not.

10. Asked why he thinks Rev. N. N. does not say mass every day? He replied, because he sometimes omits it on Sundays when he should say mass.

11. Asked on what Sundays did Rev. N. N. neglect mass? He replied, on June 5 and on June 12 last.

12. Asked was there no mass said in St. Ann's on those Sundays? He replied, no.

13. Asked why Rev. N. N. did not say mass? He replied, because he was drunk.

14. Asked how he knew Rev. N. was then drunk? He replied, I saw him often in saloons, and saw him drunk on the streets before, and when Luke

S. inquired at the rectory the first Sunday, he overheard Rev. N. cursing and calling for liquor.

15. Asked did he himself see Rev. N. on either Sunday? He replied, no.

16. Asked when did he himself see Rev. N. in saloons? He replied, often, but especially Saturday before Sunday, June 5.

17. Asked what was condition of the Rev. N. at that time? He replied, he was so drunk he had to be helped home.

18. Asked who helped Rev. N. home? He replied, one man was Matthew Q. the butcher.

19. Asked how he knew Luke N. heard Rev. N. cursing and calling for liquor on Sunday, June 5? He replied Luke S. told me so when he returned from the rectory.

20. Asked does Rev. N. attend to other duties, as sick calls? He replied, Rev. N. could not or did not give last sacraments to Y. Z. who died without them.

21. Asked how he knows this? He replied, I went to the rectory for him myself, and the servant would not let me see him. But I heard him talking as if insane and cursing and calling for drink.

22. Asked did you hear Rev. N. curse when sober? He replied, yes, especially once when he got very angry and struck N. N.

23. Asked when this took place? He replied, about three months ago.

24. Asked, did Rev. N. strike anyone lately? He replied, it is said publicly that he struck and injured G. H., but I did not see the striking. I saw G. H. afterwards and he told me so.

25. Asked where he saw G. H. who was struck? He replied, at his home, where he is still laid up on account of the blow.

26. Asked does he know who saw the encounter? He replied, I heard Charles T. and Thomas S. were

at a short distance and ran up and stopped the fuss, and carried G. H. home.

27. Asked, did he himself ever have any trouble with Rev. N? He replied, I never had any trouble with him; but I do not fancy his conduct, and really wish he were out of the parish.

28. Asked why he wishes Rev. N. out of the parish? He replied, because of the scandal and the bad example for my children.

29. Asked, does he contribute to the support of the St. Ann's church? He replied, yes.

30. Asked how and what amount? He replied by pew rent and collections, about $25 a year.

31. Asked does he give to the Christmas collection for the pastor? He replied, yes.

32. Asked whether he belongs to any party of men who have taken action to have Rev. N. removed from his parish? He replied, no, but several asked me to write to the bishop on the matter.

33. Asked, did he do so? He replied, I did not.

34. Asked why he did not write? He replied, I desired to keep out of this trouble.

35. Asked you said you saw G. H. who was struck by Rev. N.; did G. H. tell you why he was struck? He replied, because he upbraided Rev. N. with saying mass after breaking his fast.

36. Asked do you know that Rev. N. did so? He replied, all I know is that Jacob S. and Frank Z. told me he did so.

These questions being asked and answered, and accepted, if and in as much as allowed legally, at the order of the V. Rev. vicar general N. N., I read his deposition to the witness, and when he was asked whether he wished to change it by adding to or deducting from it he replied he did not. Thereupon he was ordered to sign it, and to observe

secrecy. These things were done at — this — day of — A. D. —.

Signed, Andrew N. Witness.
N. N. Vicar General.
N. N. Actuary."

378. It will be seen from the above examination that all the four points of the charges made by common rumor as laid down in n. 342 in the vicar general's *ex officio* investigation have been specifically covered. It is also possible from the testimony of this witness to show that he has no enmity, but is competent. An opening is also made for the testimony of other witnesses whose names this witness gave on certain points. A careful judge will have the counts of the indictment before him when questioning witnesses, so as not to overlook important matters, and not to allow the testimony to remain incomplete. Thus from question 36 he will remember to cite the persons therein mentioned, and will thus gather another charge. The fiscal procurator will then introduce also this new charge, as is done in n. 346, when he *ex officio* files his complaint, if such judicial criminal process becomes necessary. After taking testimony legally as above for the summary investigation, the advantage for subsequent acts is apparent.

379. In a similar manner the other witnesses are examined, each separately. If any of the witnesses states something favorable to the accused, it should be followed up and investigated. All the testimony should then be carefully compared and weighed. In case a witness cannot come to the curia on account of illness, as in the case of the man struck by Rev. N.,

then the judge and the notary may go to take his testimony at his house. In the case supposed in n. 377, this witness, judging from answer 35 of Andrew N., might give valuable testimony regarding Rev. N. saying mass after breaking his fast. The acts will then read:

"Witness N. N. This witness being confined to his house by injuries could not come to the tribunal; therefore the V. Rev. Vicar general, with me accompanying him went to him. The witness being duly sworn at — on the — day of — A. D. —, deposed and said, &c."

380. When an examination is interrupted for any cause, the acts may read thus:

"Because of the lateness of the hour (or other reason) the V. Rev. Vicar general could not complete the examination of the aforesaid witness and decreed to interrupt it temporarily, with the intention however, of resuming and completing it. The witness, however, having heard his deposition read and accepted, *si et in quantum*, was ordered to sign it. These things were done &c.

Signed, N. Witness.
N. Judge.
N. Actuary."

Later when the examination is resumed the acts will read:

"The V. Rev. Vicar general wishing to continue the examination of the same witness, N. N., ordered him recalled and the oath being again administered and taken by him at — on the — day of — A. D. —, he further deposed as follows:"

381. Sometimes it becomes necessary to introduce documents as proof. If these are official, there is

little trouble to show authenticity. If they are private letters, it may be necessary to prove the handwriting. This may be done by witnesses who know the writing. Below is a short form of examination:

"Witness is cited, sworn and asked general questions as usual. Then he is asked:

1. Asked do you know E.? He replied, I do.

2. Asked have you corresponded with him? He replied, formerly I did.

3. Asked would you know his handwriting? He replied, I would.

4. Asked would he be able to select his handwriting from any others? He replied, yes, very easily.

Then the V. Rev. Vicar general offered several papers to the witness, among them being that alleged to be E.'s. The witness without hesitation chose a paper and said "This is the handwriting of E. and in fact it was the writing alleged to be that of E."

The deposition should be closed in the usual way. Then a second witness should depose to the same effect.

CHAPTER VIII.

FORMS FOR CITING THE ACCUSED.

382. When the informative process is completed, the vicar general or judge should carefully weigh the testimony. If he does not find at least half-full proof of guilt all further proceedings must be stopped. But if there is certainly at least half-full proof of guilt, he may proceed to cite the accused. The instruction, Art. 21, says that all proofs should be collected before the accused is cited. Hence we say the judge may, not must, cite the accused if he has at least undoubted half-full proof of guilt. But a prudent judge will not issue a citation unless he has *prima facie* evidence sufficient to convict, i. e., such full proof that if not offset by the accused will convict him. It should be remembered that to-day when an accused cleric is criminally cited and tried, he must be absolutely convicted or declared innocent. He cannot be dismissed with the sentence "*ex hactenus deductis*" not guilty. Such a sentence is now illegal. (*Cf. S. C. EE. & RR. 11 Sept. 1818; 11 Sept. 1804.*) Again, when once tried, he cannot again be tried on the same charges. Hence we say a prudent judge acting ex officio under the procedure, will not cite an accused person unless he has *prima facie* full proof of guilt.

383. The decision of the vicar general whether or

not to cite the accused may be entered in the acts as follows:

"Since from the proceedings had up to the present there appears at least half-full proof of the crimes charged against Rev. N. N., namely, (state charges) and since sufficient appears from the informative process to authorize the citing and examining of the accused, the V. Rev. Vicar general (judge) decreed to cite and examine the said Rev. N. N. and to proceed further according to law. Done at — this — day of — A. D. —.

N. N. Vicar General (Judge.)
N. N. Actuary."

But if less than half-full proof was found then a decree is issued not to proceed further:

"Since from the informative process now finished not even half-full proof has arisen concerning the alleged crime of Rev. N. N., namely (state charge;) and since by this very fact that is wanting which the law demands as necessary before citation may be issued to the said accused; therefore the V. Rev. Vicar general (judge) has decreed that no further proceedings shall be taken against him. Done at — this — day of — A. D. —.

N. N. Vicar General (Judge.)
N. N. Actuary."

384. The accused must be cited in writing and in the citation, unless prudence demands the contrary, the accusations must be made known. In case it is not expedient to make known the accusations, it is sufficient to state that the accused is cited in order that he may defend himself in a cause concerning which an investigation is being made against him. A copy of the charges may be enclosed and merely a reference to the copy is sufficient in the citation.

(*Cf.* "*Cum magnopere*," *Art. 21-23.*) The accused should be cited personally by court messengers, or where there are none, by some other person or by registered letter. (*Cf. Art. 14.*) When the accused cannot be reached, either because he hides himself or has fled or his address is unknown, then a citation may be left at his usual place of residence or he may be cited by edict affixed in some public place, as on the doors of the parish church.

385. The first citation, according to Art. 24 of "Cum magnopere," should be a simple one without threat. Should the accused neglect the first summons, then a second should be given in which a peremptory term is assigned for his appearance and notice is given that if he fails to appear within that time he will be adjudged contumacious. Should he transgress this second and peremptory citation, without showing a legitimate impediment, he will be held *de facto* contumacious. Under the "Cum magnopere" three citations are no longer necessary. Nor does it appear that in extraordinary circumstances the right to combine the two citations into one peremptory citation is taken away, provided in the one peremptory citation the required warning is given concerning contumacy. Because nothing is enacted to the contrary, it seems that the "congruous time" to be given in a peremptory citation is twenty days. The general practice allows ten days for each of three citations, or thirty days in all. By limiting the number of citations to two, the "Cum magnopere" may also be said to have shortened the time to twenty days.

386. The citation should clearly express the name

of the person cited, the cause as stated above, the name of the judge who cites, the place where and the time within which the accused is to appear. The citation should also state whether it is the first or the second and peremptory summons. Following is a form to be used under the "Cum magnopere" process:

"We, N. N., vicar general of the Most Reverend Bishop N., since the report has come to us concerning certain offenses alleged to have been committed by Rev. N. N., a copy of which as charged is sent herewith, and since the evidence concerning these offenses, as in the acts of the informative process, is sufficient to compel us to pronounce, as we did pronounce, that public defamation exists against the said Rev. N. N. and that this defamation has its origin not in enemies and malevolent but in serious minded persons; therefore in order to satisfy the requirements of our office we have decreed to cite for examination the aforesaid Rev. N. N., as by these presents we do cite him, to personally appear before us in the episcopal curia within the space of (ten days from the date of this citation, which is the first. Given &c) twenty days from the date of this citation, of which we assign ten days for the first and ten days for the second and peremptory term, this one warning being sufficient for the two canonical warnings required by "Cum magnopere." Therefore should the aforesaid Rev. N. N. fail to appear within the said peremptory term, unless legitimately impeded, let him know that we shall proceed by law against him as contumacious, without any other or further warning. Given in the episcopal chancery at — the — day of — A. D. —.

N. Vicar General.
N. Actuary."

387. Following is a form of citation by edict which

can be affixed to the door of the diocesan chancery, parish church, or other public place, especially in quasi-notorious cases when the accused cannot be reached or has fled from the diocese:

"We, N. N. vicar general of the Most Reverend Bishop N. do by these presents command, cite and expressly order that, within the peremptory term of twenty days from the date of these presents, the Rev. N. N. who is said to be guilty of certain offenses, namely, (express the charges if prudence allows it; otherwise say, which will be made known to him) shall appear in the chancery office (or usual place for court) to inform the curia, to see the oaths of witnesses, to make publication of the acts and lastly to hear sentence, under pain of having confessed the crime and other punishment by law established. Given in &c. Dated &c.

N. Judge.
N. Actuary."

388. When it is necessary to apply to a neighboring bishop to serve a citation in his diocese, the acts may read:

"Thereafter, because the V. Rev. Vicar general knew that the aforesaid Rev. N. N. was staying in the diocese of N—, in order that the citation might surely reach him he ordered that remissory letters be sent to V. Rev. N. vicar general and ordinary judge in that diocese. Which letters were expedited and are of the following tenor: V. Rev. Sir—Since it is known that you are ordinary judge in the diocese of N— and since we are informed that Rev. N. N., a priest subject to the jurisdiction of our Most Rev. Bishop, is staying in your diocese, but whom it is my duty to cite for a criminal cause now pending against him in this curia; it therefore was judged prudent to ask you to have the enclosed citation

served through one of your officials on the aforesaid Rev. N. N. personally or in the place of his usual residence and to have a judicial report of said service transmitted to me (enclose citation.) Meanwhile offering my services I pray God to have you in his keeping. Given &c. N. Vicar General.
N. Actuary."

The actuary of the diocese to which such requisition is sent will formulate his report thus:

"In the name of the Lord, amen. Since the V. Rev. N. N. vicar general of our Most Rev. Bishop, received from V. Rev. N. N., vicar general and ordinary judge in the diocese of N—, certain remissorial letters of the following tenor; (insert letters as above) therefore the aforesaid V. Rev. Vicar general decreed to execute them according to law. Wherefore he consigned the aforesaid citation to N. N. our official messenger, and ordered him to serve it personally, or in his usual place of residence, on Rev. N. N. The said messenger having returned to me, the actuary, made report that he had served and left a copy of the said citation on the said Rev. N. N. Done at — this — day of — A. D. —. I, N. N. messenger affirm as above. I, N. Vicar General.
I, N. Actuary."

This process is then sealed and forwarded to the vicar general who made the requisition. He will then have the actuary make an entry in the acts as follows:

"The aforesaid remissorial letters were executed concerning which the V. Rev. Vicar general received a judicial report as follows:" (Insert the above report.)

However, since a verbal citation is not considered an act of jurisdiction it may be served in the diocese of another bishop by registered mail or even by messenger, if good policy allows it.

CHAPTER IX.

CONTUMACY OF THE ACCUSED.

389. When the citation has been served on the accused, it may happen that for good cause he cannot appear within the appointed time. To excuse his absence, but not to plead for him, he may send a procurator. (*Cf. Magalius, Praxis Crim. C. 15, n. 36*). It is far safer to send a procurator than a mere letter which may be ignored. The accused may send word before the expiration of the time for appearance and ask an adjournment. The judge will consider the reasons given, and if he approves them, will grant the request in writing and order the actuary to make proper entry. If he disapproves them and orders proceedings continued without adjournment, the actuary will make proper entry in the acts:

"Thereafter, the said Rev. N. N. through his procurator asked from the V. Rev. N., the judge, a prorogation of the peremptory term set for his appearance because of certain impediments which rendered his coming impossible. The excuse seemed reasonable to the said V. Rev. Judge, and he thereupon adjourned the peremptory term for appearance to — (giving the exact date.)" Or, "The excuse offered did not seem reasonable to the V. Rev. Judge, and therefore he decreed that, without paying attention to it, further proceedings should be had. Done at — this — day of — A. D. —.

N. N. Judge.
N. Actuary."

390. It may happen that the peremptory term has elapsed without the accused appearing. If such is the case, on the first day *after the expired peremptory term*, the judge will call in open court the name of the accused, and if no one appears, the fiscal procurator will ex-officio move that the accused be declared in contumacy. Under the "Cum magnopere" only one accusation of contumacy is necessary, not three as is customary in some places. But this must be made only after the peremptory term has expired. If a procurator answers for the accused and offers reasons for his non-appearance, the judge will consider the reasons, and if he deems them sufficient, will then make an order which the actuary will enter:

"But since the said Rev. N. N. did not appear before the expiration of the peremptory term, in order that he might escape punishment for contumacy he sent a procurator to give the judge reasons for his absence. Which reasons the judge considered legitimate, and consequently declaring the said Rev. N. N. not to be contumacious, he assigned another peremptory term for his appearance, namely — (give exact date.) Done &c.

N. Judge.
N. Actuary."

391. But if no one appears and no excuse is given or if the excuse offered is frivolous, the fiscal procurator will say:

"I accuse Rev. N. N. of contumacy, inasmuch as being peremptorily cited, and reported cited and not appearing, he is contumacious and I move he be so declared."

The judge will then make his order or declara-

tion and the actuary will enter it in the acts. If the excuse is disallowed the entry will be:

"But since the said &c (as in 390.) Which reasons the judge did not consider legitimate, and consequently, on motion of the fiscal procurator, he declared the said Rev. N. N. to be in contumacy and ordered proceedings against him according to law; and further ordered that the trial proceed in his absence and appointed N. N. as advocate to represent him and set —— as the term *ad producendum omnia*. Done &c.

N. Judge.
N. Actuary."

Or the actuary will enter the following according to circumstances:

"On the — day of — A. D. —, (the day after peremptory term) when Rev. N. N. was called in court, and neither himself nor another for him offered an answer, the fiscal procurator *ex officio* moved that the said Rev. N. N. who was peremptorily cited, reported cited and did not appear, be declared contumacious. Consequently the V. Rev. N., vicar general, declared that the said Rev. N. N. had fallen into contumacy and decreed to proceed against him as contumacious, and further decreed to continue the trial in the absence of the accused. Wherefore the V. Rev. Judge *ex officio* appointed N. N. as the advocate to represent and defend the said contumacious Rev. N. N. and ordered the trial to proceed according to law and appointed —— as the term *ad producendum omnia*. Done at — this — day of — A. D. —.

N. Judge.
N. Actuary."

392. It must be noted that after the accused is declared contumacious, there are really two proceedings instead of one. The original trial is continued as in the "Cum magnopere," and proofs are offered of the

guilt of the accused; for although contumacy constitutes a very strong *presumption* of the guilt of the accused, still it is not proof. The trial on the charges will then proceed in the absence of the accused and notices regarding it thereafter will be given to the advocate appointed for the accused instead of to the accused himself. The contumacy of the accused may be mentioned in the definitive sentence on the charges, to hear which definitive sentence the contumacious accused should for safety be cited, as well as his advocate.

But there arises through contumacy a second proceeding against the accused which should be kept distinct from the trial on the charges but which may be inserted as part of the acts in the original case. After the judge has declared the accused in contumacy he should issue to him a monitory citation, summoning him to show cause why he should not be punished for contempt. This citation is essential and necessary for validity before sentencing for contempt or contumacy. (*Cf. Zitelli, Ap. J. Ec. pg. 505; Smalzgruber l. 2, t. 14, n. 55; and l. 2, t. 6, n. 55; Conc. Trid. sess. 25, c. 3 de ref; see also n. 334 above.*)

The council of Trent requires that at least two monitions should be given before censure for contumacy is passed, but these two monitions may be combined into one peremptory citation, if mention is made of such fact in the citation. The forms given in n. 360-363 above for the punishment of a contumacious witness may be used *mutatis mutandis* for the canonical monition, citation and sentence of a contumacious accused person. But in the case of

both it should be remembered that lesser punishment must first be inflicted, and only as a last resource excommunication. In fact Pierantonelli, *Praxis pg. 134*, and Droste-Messmer, *Procedure pg. 137*, hold that excommunication can be inflicted only when no other punishment can be executed on the contumacious person. This applies *a fortiori* when only a witness is contumacious. If after falling into contumacy, the accused repents and appears, he must first purge himself of contempt of court and be declared free from it before he may take part in the trial on the charges. If the trial on the charges is concluded and definitive sentence passed while he is in contumacy he cannot appeal against such sentence. However, he may always show that he was not really contumacious. If he can give such proof, he may then have a new trial. Hence it is advisable for a judge to depend on proof, not on contumacy, for inflicting severe sentences.

CHAPTER X.

CHALLENGE OF THE JUDGE. ARBITERS.

393. When the accused appears in court within the peremptory time, before he pleads to the charges, if he has any exceptions to make he should at once propose them. Especially must this be done if he excepts against the judge or challenges him for cause. This exception must be made first, and within twenty days after the citation. (*Cf. L. offeratur 1, c. de lit. cont.*) Later he may make others, such as *res judicata*, or prescription. Hence as soon as served with the citation he should at once engage a competent advocate, whose instructions he should follow exactly. This advocate will send word of his being retained to the bishop of the accused, and formally ask approval, unless from his well-known character or previous approval he is supposed approved. In any event he must inform the curia that he acts as "defensor." He may accompany the accused and advise him what to do or avoid doing in answer to the citation. The accused undoubtedly at all times may be accompanied by his advocate, though he cannot be represented by a procurator. However, according to Art. 30 of "Cum magnopere," and n. 315 of Third Plen. Coun. Baltimore, the accused himself may also be represented by his advocate in the summing up of the process, at which time and during

the sentence the accused may be absent if he wishes. At other times he must be present.

394. Following is a form for presenting a recusation of the judge which should be in writing and state the reasons. (*Cf. L. 16, c. de jud.*)

Diocese of N— }
vs. }
Rev. N. N. }

"Comes now on the — day of — A. D. —, before the V. Rev. Vicar general, the Rev. N. N., the accused in this case, and with all due showing of honor and reverence for the said V. Rev. Vicar general, says that the person of the said vicar general is by him suspected, because he is an enemy and because the chief complainants and witnesses in this case, namely X. Y. and C. D., are either relatives or intimate friends of the said vicar general. Wherefore for the above and other reasons he, the accused, Rev. N. N. challenges and recuses the said vicar general as judge, and asks and wishes and insists that he shall no longer concern himself in the cause now pending against the said accused; and he protests the nullity of the proceedings, if notwithstanding this present recusation the said V. Rev. Vicar general continues to act. Dated —. I, N. N. except and recuse as above.

N. Advocate for Defendant."

395. The actuary will enter the recusation in the acts, and the vicar general will either appoint a judge-delegate for the case with the consent of the accused, or transmit the whole case to the higher tribunal, or make an order that arbiters be chosen to decide on the merits of the recusation. If arbiters are chosen, the judge selects one, the accused the other. These two, if they cannot agree, choose a third, and the decision of the majority is binding.

They first examine whether the reasons alleged in the challenge are sufficient if true, and then they examine whether the reasons are really true. Following is a form for entry in the acts:

"Appearing personally in the curia before the V. Rev. N. vicar general, with the fiscal procurator, Rev. Q. and myself as actuary present, the accused Rev. N. N. came and offered the following recusation against the said V. Rev. Vicar general, as judge. (Insert words of challenge as above.)

Consequently the V. Rev. Vicar general ordered the said recusation placed in the acts which was inserted as above, and is found in the original among the documents and is marked ——. He further ordered that arbiters should be chosen according to law to determine the merits of the recusation, and for himself selected Rev. M. as one arbiter and ordered that the selection of Rev. O. who was chosen by the accused as a second arbiter, be noted in the acts of the process. Further he ordered an adjournment of this trial on the charges, until the question of the recusation shall have been determined. Done in the curia, this — day of — A. D. —.

N. Vicar General.
N. Actuary."

396. The arbiters must refuse or file acceptance with the judge who will order it entered in the acts. Then the arbiters will meet as soon as possible and with the same actuary, or another, will examine and determine the law and facts on which the challenge is based, and will report their decision in writing to the challenged judge who will order their finding and their acts entered in the acts of the original process. Following is a form for recording the acts of the arbiters:

"In the name of the Lord, amen. Since in the cause which is pending against Rev. N. N. before the V. Rev. Vicar general, the said Rev. N. N. recused and challenged the said vicar general as suspected, and since to determine the validity of this recusation, according to law and the practice of this curia, Rev. M. and Rev. O. were chosen respectively by the parties, and their nomination was made known to them and their acceptance of the office of arbiter was received, as all appears in the acts of the process; therefore the aforesaid Rev. M. and Rev. O. the chosen arbiters, wishing to fulfill their duty according to law convened in ——, and having summoned me the undersigned as actuary in this matter, who was already employed in the case by the vicar general as is in the acts, they called Rev. N. N. who had challenged the V. Rev. Vicar general as suspected, and having administered to him an oath, which he also took, that he recuses the said vicar general, as judge, not from fraud or with the intent of calumny but only for his own defense, he was ordered to show the cause of his challenge, and to produce witnesses and other legitimate proofs, by which the truth and substance of such a charge might be sustained. The said Rev. N. N. thereupon produced a copy of the challenge presented to the aforesaid V. Rev. Vicar general and said to the Rev. arbiters that it contained the reasons for his challenge and he filed a list of the witnesses, namely (X. and Z.) to prove his statements, and asked that his proofs be admitted by the Rev. arbiters and that they proceed to examine both the law and the facts in the case. The Rev. arbiters admitted the aforesaid copy of the challenge and documents, *si et in quantum*, and ordered proceedings according to law. They ordered me as actuary to receive the said challenge and place it in the acts which I did, and it is found among the documents marked ——. Done at — this — day of— A. D. —.

I, M. Arbiter. I, O. Arbiter. I, N. N. recuse and affirm as above. N. Actuary."

"Thereafter, the aforesaid arbiters, convening in their accustomed place, examined the cause of the recusation as expressed in the challenge produced before them by the said Rev. N. N., and when they noticed that it was founded on a suspicion of enmity which is alleged to exist between the said V. Rev. Vicar general who was challenged and the said Rev. N. N. who challenged him, and also on close relationship between the accusing parties and the said V. Rev. Vicar general, they pronounced that the said cause was legitimate in law; and that therefore investigation should be made to determine whether such enmity and close relationship existed in fact. Consequently the Rev. arbiters decreed to proceed to the examination of witnesses produced by the said Rev. N. N. who challenged. Wherefore X. being called as a witness and being duly sworn was asked &c." (Here is given the examination of the witness on the point in question, according to the form given in n. 373 or 377 above.)

397. The arbiters must examine witnesses and documents offered by the challenger. Then it is proper for them to ask the challenged judge whether he has anything he wishes to oppose to the allegations of the challenger. This should be recorded in the acts:

"Afterwards the Rev. arbiters, thinking it proper to hear also the V. Rev. Vicar general, the challenged judge, in order that he might oppose, if he so wished, the proofs brought by the Rev. N. who challenged, ordered me, the actuary, to carry to the V. Rev. Judge the acts of the process thus far held before the arbiters, and to give him an opportunity of reading them. Which command I having fulfilled, the said V. Rev. Vicar general, having seen and

read the acts, thanked me, and said he had nothing to oppose to the recusation. (Or) And the said V. Rev. Vicar general later called me and gave me a writing in which are found the points he opposes to the allegations of the challenger, Rev. N. N., and he ordered me to present it to the Rev. arbiters. Which when I did the aforesaid arbiters ordered me to insert the paper in the acts. This I did marking it —— among the documents. In testimony &c. Dated &c. I, N. Actuary."

398. If the vicar general wishes the arbiters to examine witnesses for his side, they will do so and insert the examinations in the acts. They will then consider the proofs and give written judgment in about this form:

"In the name of the Lord, amen. We, M. and O. chosen "arbitri juris" and respectively selected by the parties to decide in the matter of the challenge and recusation as judge, made by Rev. N. N., an accused person, against the person of the V. Rev. Vicar general; having examined witnesses and the proofs produced on each side, and having heard the parties informing on each side, and having fully discussed the merits of the cause; having only God, the source of justice, before our eyes, we say that in no way, neither fully, nor half-fully are the reasons of the alleged challenge sustained, namely, (here give the reasons advanced by the challenger.) Therefore we decide that the aforesaid challenge and recusation is of no force, and by it the ordinary jurisdiction of the V. Rev. N., vicar general and ordinary judge, is in no wise impeded from prosecuting the cause begun against the aforesaid Rev. N. N. Thus we have pronounced this — day of — A. D. —.
I, M. Arbiter. I, O. Arbiter. N. Actuary."

399. However if the reasons for challenging were half-fully proved the decision will be:

"In the name (&c to the words 'we say'). We say that the reasons for the challenge and recusation are sufficiently proved namely, (give reasons); therefore we decide that the aforesaid challenge is sustained as legitimate in law and fact; and we say that the aforesaid V. Rev. Vicar general, the ordinary judge, should abstain from the prosecution (or beginning) of the cause against Rev. N. N., the challenger; and the said vicar general is obliged to refer it to the higher court, or to delegate for the said cause another judge, free from suspicion, with the consent of the aforesaid challenger. Thus we have pronounced this — day of — A. D. —.
I, M. Arbiter. I, O. Arbiter. I, N. Actuary."

The decision and all the acts of the arbiters will be entered in the acts of the process against the accused, and thus become part of that process. The vicar general, or judge, will then make the order required in the circumstances, which will also be entered in the acts in the usual way.

CHAPTER XI.

HEARING GIVEN THE ACCUSED. LEGALIZING OFFENSIVE PROCESS.

400. When the accused comes into court not to propose exceptions, but for a hearing on the charges, the judge will direct the fiscal procurator to read the charges to the accused and give him a copy if he has not already received one with the citation. If a copy has been given with the citation an immediate hearing may be had; but if the accused first learns the charges on appearing in obedience to the citation, it is certain that a reasonable delay must be accorded him before the hearing.

The accused is not obliged to make any statement at this time, except he wishes to plead guilty and take his punishment. The accused is not bound to confess his guilt, nor has the judge any right to insist on his answering questions which would convict him. Neither can the judge force the accused to answer any questions at this stage of the process. The practice of extorting a confession is no longer in vogue. The intent of this preliminary hearing is that it is a favor or defense for the accused, and gives him a chance to present exceptions and possibly clear himself. This is evident from Art. 25 of the "Cum magnopere," where it says "audiatur," and orders that the statement be examined which he makes in

his own favor. It is now forbidden to require the oath from the accused. Unless the accused has a conclusive proof that he is innocent, the less he says at this stage of the proceedings, the better for himself. He should allow the fiscal procurator to make his proofs without any assistance.

401. When the fiscal procurator has read the charges, the judge asks the accused what he has to say. He usually replies, "I am not guilty of the things charged." This is really the *litis contestatio* in the criminal case, and thereafter the fiscal procurator cannot alter the charges. He may change his capitula or specifications because they have not yet been presented to the judge. Sometimes the accused explains away the whole case, but this seems rarely possible. At other times by saying too much he completes the case for the prosecution. With this end in view, the judge also asks questions, but the accused is now not obliged to answer them. His mere word will not be proof if in favor of himself, but it will be a confession if it is against himself. Therefore he will say nothing, if prudent, except to enter a general plea of "not guilty."

402. After this first hearing given to the accused, the fiscal procurator may find it necessary to change his specifications, either by dropping some, or modifying the language of others. He is entitled to an adjournment for this purpose if he asks it. However, if he is ready to proceed, he may hand his capitula or specifications to the judge immediately after the hearing of the accused is ended. The judge will either admit them as offered or modify them according to the canons. After being admitted

by the judge they can no longer be changed by the fiscal procurator. The specifications are read to the defendant on the day appointed *ad dicendum contra capitula*, and to each of these specifications he is obliged to make a specific reply if the judge so orders. But a refusal cannot now be taken for an admission of the specification, for the accused is not under oath. He should make a careful specific answer and may also offer counter specifications.

403. The entry in the acts of the hearing given the accused may be as follows:

"Appearing personally in the curia before the V. Rev. Vicar general, with the fiscal procurator, Rev. Q., and myself as actuary present on the — day of — A. D. — the accused Rev. N. N. was admonished to tell the truth and was asked:

Q. What is his name? He replied, N. N.

Q. Where he lives? A. In X—.

Q. What is his position? A. Rector of St. Ann's.

Q. Was he ever before under charges in the curia? A. No.

Q. What does he say to the present charges? A. Not guilty.

Q. Has he anything more to say? A. Not at present.

Q. Did he not receive a canonical precept on certain points? A. Yes.

Q. Did he keep the precept given? A. He does not recollect ever breaking it.

Q. Does he say mass on Sundays? A. He prefers to answer no more questions at present. (Or other questions as occasion requires may be asked.)

Which being had and received, si et in quantum, on the order of the V. Rev. Vicar general the aforesaid questions and answers were read by me to the said Rev. N. N., who, having been asked whether

he wished to make any changes therein and replying he did not, was ordered to subscribe the said examination. Done this — day of — A. D. —. I, N. N. testify as above.

N. Vicar General.
N. Actuary."

"The hearing of the accused being finished as stated above the V. Rev. Vicar general assigned to the fiscal procurator, as a term for offering the specifications, next (Thursday) the — day of —; and he cited the accused to appear on that same day at 9 a. m. to hear the specifications of the procurator and to reply to them. Done this &c.

N. Vicar General.
N. Actuary."

(Or) "The hearing of the accused being finished as above, and the fiscal procurator being ready with his specifications, he presented them to the V. Rev. Judge, who ordered them read to the accused. The specifications are as follows: The fiscal procurator specifies and on denial intends to prove, 1° that a regular canonical precept was given the accused on May 31, 1898, ordering him to practice sobriety and to cease frequenting places where liquor is sold; 2° that the accused since the precept has frequented such places; 3° that since the precept the accused has been drunk on the streets of X; 4° that on the— day of last — when in a drunken condition several men assisted in taking him to his home. (Other specifications may be drawn, based on the precept in n. 332 and the libellus n. 346, for which the fiscal has proof on hand.) The accused being asked successively regarding each specification admitted the first, denied the second, third, fourth. (Record exactly what the accused answered.)

"Which replies of the accused being given and recorded were read to the accused and he not wishing

to change them in any way was ordered to subscribe them. Done &c. I, N. reply as above.

N. Vicar General.
N. Actuary."

404. If the procurator demands an adjournment to collect his proofs it must be given and recorded in the acts. If not, then continue the acts:

"Thereafter, the fiscal procurator informed the judge that all the documents and testimony of witnesses which for the present he would present, were now before the court. Thereupon the V. Rev. Vicar general asked the accused whether he would accept and hold the witnesses as being rightly and lawfully examined, saving the exceptions and repetitions which may occur. The accused declared that, saving the exceptions and repetitions which may occur he will and does hold and accept the witnesses as properly and lawfully examined and accepted. He was then ordered to subscribe such declaration in the acts. Done &c. I, N. declare and accept as above. N. Vicar General. N. Actuary."

405. The publication of the testimony previously taken against the accused and of the other documents offered by the fiscal procurator to sustain his charges is essential. How it must be done is disputed. The safest way is to have the actuary read it to the accused in court. (*Cf. III C. Balt. n. 314.*) This will serve not only as a publication and legalization of the process, but also as a verbal confrontation of the witnesses, which is also required, unless a personal one takes place. Usually the accused will legitimize the process by declaration. However if he refuses to do so, a repetition of the testimony must take place for the validity of the process.

406. But in order that the legalization of the process, "especially through confrontation, may be less complicated and tedious, it will be advisable, that in case the accused refuses to legitimate the process through declaration, no *personal* but only a *verbal* confrontation of the witnesses take place; that is, that instead of the witnesses being personally placed in the presence of the accused, only their depositions be read to him by the judge and notary and he be allowed to make, and to have put on record, whatever exceptions he desires to make against the *persons* and the *depositions* of the witnesses. With this act the process becomes legitimized in all things whatsoever, whether they are already begun, or are yet to be begun, even though the written defenses have already been handed in, and that with all the legal effects of a true and real legitimation." (*Circular of S. Cong. BB. and RR. Aug. 1, 1851.*)

407. Following is a form of legalization by way of verbal confrontation:

"Date ——. The accused N. N. having appeared before the judge and me the notary, was again admonished to tell the truth respecting himself and was sworn to tell the truth in regard to other parties. Thereupon for the purpose of legalizing the process, the testimony of the witnesses N. and N. examined under dates of —— was read to the accused in full and word for word. Being then asked whether he had anything to say against the *persons* or *depositions* of the witnesses, and being informed at the same time, that by this act he was deprived of all right to have the witnesses repeat their testimony, he answered: After you, the vicar general (judge) have caused the notary here present to read for me the depositions of the witnesses N. and

N. examined under date of — and having fully understood them, I have to say &c. (Here follow his answers which must be recorded exactly by the actuary.) Afterwards &c." (About reading and signing by accused and judge and notary.)

408. It must be noted, however, that the circular quoted above does not prohibit personal confrontation of the witnesses. Personal confrontation is the practice in all secular courts in the United States and has been introduced into France and other countries as well as the United States in church courts. It is in much better accord with general sentiment than a mere verbal confrontation, which latter renders a cross examination practically impossible. Moreover, under cross examination lying witnesses will be discovered more easily. In trial for capital offenses (deposition from parish) the defendant may demand a personal confrontation. This is a form in such case:

"Date ——. In presence of the judge, fiscal procurator and me, the actuary, and of the accused, for the purpose of legalizing the process, the previous deposition made by the witness N. under date of — was read to the said witness in full, and word for word. Being asked whether he now confirmed his previous statements or whether he wished to change them in any point, he answered: (Here follow the answers of the witness.) After this the accused was asked whether he had anything to say against the person or deposition of the witness and being informed &c., (as in previous form in n. 407.)"

This confrontation must take place, of course, in the court in presence of the judge, fiscal procurator, actuary, and the accused. The witness must be put under oath. All these points should be entered in

the acts. With the publication of the acts, the offensive process becomes complete.

409. When the testimony has been legalized the accused or his advocate may demand a copy of the acts and it is recorded in this form:

"On the — day of — A. D. —, the Rev. N., the advocate of Rev. N., the accused, appeared before the V. Rev. Vicar general and asked that an integral copy of the acts, with also the names of the witnesses, be given to him, since he intends to except against the persons of these witnesses, as well as their testimony, saving always due respect for the V. Rev. N. the vicar general, and he insists in this and every other best way. I, N. N. advocate, ask and insist as above.

N. Vicar General.
N. Actuary."

Following is a form for recording the acts:

"Thereafter the V. Rev. Vicar general ordered the publication of the proceedings thus far had in this cause. Consequently by his order the whole *processus offensivus* was read in a loud voice in court; which being done the same V. Rev. Vicar general ordered that the offensive process should be held for published. Wishing moreover to grant the accused everything necessary according to law for his defense, the V. Rev. Vicar general assigned him a term of seven days, i. e., on — as the date for presenting his defense; he also granted his request that a copy of the acts be furnished him or his advocate, together with the names and testimony of the witnesses, since he, the accused, has declared that he receives and accepts their testimony as lawfully taken. Done &c. Date ——.

N. Vicar General.
N. Actuary."

"Wherefore a copy of the aforesaid acts, collated and authenticated, word for word, was given to the said accused (or his advocate), who received it, reserving to himself the right of asking a prolongation of the term for defense, the cross examination of the witnesses according to questions to be proposed by himself, and the making of a new defensive process; further he held the witnesses examined by the curia as legitimately examined and received; concerning each and all of whom he expressly made declaration. Done at — this — day of — A. D. —. I, N. N. (advocate) affirm the above to be true.

N. N. Actuary."

At the bottom of the copy the actuary will thus certify to it:

"The above copy was collated by me, word for word, with its original, extant with me, and it agrees therewith in all things. In testimony whereof &c. N. N. Actuary."

CHAPTER XII.

DEFENSE OF THE ACCUSED.

410. The accused, having learned through the official publication of the process what charges and testimony are against him, has the natural and legal right to defend himself by producing testimony and even by a written explanaton. (*Cf. Cum magnopere, Art. 27-31.*) So necessary is this defense in criminal cases, that the judge is bound to grant a term for it even though the accused has confessed the charges and does not wish a defense. (Communis DD.) Moreover if the accused does not select an advocate at this stage of the process the judge is obliged *ex officio* to appoint one to act. (*Cf. l. c. Art. 31.*) The documents are presented and witnesses examined for the accused in the same manner as for the prosecution, the forms for which are given above in n. 377-381. When the defendant has produced all his testimony, the prosecution may offer testimony to rebut it, and again the defense may oppose the rebuttal with other testimony. Then the prosecution usually declares that it rests its case and the defense makes a similar declaration. This resting shuts off the prosecution from presenting any further testimony, but not the defense, which may offer additional testimony at any time before the sentence. But if the defense introduces new witnesses the prosecution is thereby entitled to rebut them by

other witnesses. This declaration by both sides that they rest their case is the *conclusio in causa*, in as far as there can be one in a criminal case. It need not be made in any set form. After the vicar general, or other judge, has declared the process closed (*absoluto processu*) he makes a summary of the case, stating its origin and the various stages of the process, giving also the conclusions which follow legally on the one hand from the testimony of the prosecution and on the other hand from that of the defense. If the vicar general is also to give sentence, he nevertheless at this stage makes a summary of the case. If an auditor has acted, this summary concludes his work, and he turns over to the ordinary judge the whole case together with the summary he makes of it.

411. Following is a form for recording a demand for longer time for defense:

"On the — day of — A. D. — the Rev. N. advocate for the accused Rev. N. appeared before the V. Rev. Vicar general and asked a longer term than the seven days granted for defense, which he says is too short for several reasons given by him. The V. Rev. Vicar general held his request to be reasonable and therefore, having accepted it *si et in quantum*, ordered the term prorogued for another seven days, counting from the expiration of the first term. Done this — day of —.

N. N. Vicar General.
N. Actuary."

But if the request is refused then say:

"On the — day of — A. D. —, the Rev. N. &c (as above to the V. Rev.) The V. Rev. Vicar general considering that the reasons alleged were not suffi-

cient and that the request was made simply to prolong the trial, denied the request and said that if the defense is not made within the time allowed, further proceedings will be had without paying attention to the defense. Done &c.

N. Vicar General.
N. Actuary."

412. If the accused wishes to appeal or except against such a denial (for he can except) the acts may thus be written:

"To which the aforesaid advocate (or accused) replied that the reasons advanced by him are legitimate and by no means invented to delay the trial; that therefore he appeals to those to whom by law he should appeal from the foregoing sentence and decree; and he protests the nullity of the acts if further proceedings be had, and he asks that the original acts be forwarded to the higher court urgently and most urgently. Done this — day of — A. D. —. I N. N., advocate, protest and appeal as above.

I, N. N. Vicar General.
I, N. Actuary."

If the judge then grants the request rather than waste time in the appeal, the facts may be thus recorded:

"But the V. Rev. Vicar general seeing the perseverance of the aforesaid advocate in appealing, and considering that although the appeal is frivolous and the alleged reasons are not legitimate, but that nevertheless the trial would be more prolonged in discussing them than in granting the demanded prorogation, prudently receding from his decree of refusal already made, granted another term of seven days from the expiration of the first term. Done this — day of — A. D. —. N. Vicar General.
N. Actuary."

The above forms may be used with proper changes for recording any interlocutory sentence, appeal therefrom, and receding from the decree first entered. If the judge refuses to recede and orders the trial to proceed, it would be very dangerous for the defendant to resist and try to get a hearing on appeal.

413. When the accused or his advocate has received a copy of the offensive process he will formulate a cross examination of the witnesses for the prosecution, before he presents his own witnesses. By legalizing the testimony already taken he did not forfeit the rights of cross examination and exception. No exact form can be given here for such cross examination; but it should be based on the examination in chief and tend as much as possible to weaken such examination. The judge may reject questions which are irrelevant and purely defamatory. Still the fullest chance should be given the defendant to defend himself. The acts may read thus:

"On the — day of — A. D.—, in the curia before the V. Rev. Vicar general, appeared Rev. N., advocate for the accused Rev. N., and in the name of his client asked a recall of the witnesses — (mention them) for the prosecution and a re-examination on points which he mentioned; and at the same time he presented a series of interrogatories, which the V. Rev. Vicar general accepted, *si et in quantum*, and which on his order I placed in the acts marked n. —. In testimony whereof, &c.

N. Advocate.
N. Vicar General.
N. Actuary."

414. The following form may be used for presenting the questions to the judge:

"Questions which the Rev. N., advocate for the accused Rev. N., presents to the V. Rev. Vicar general and asks that the respective witnesses be examined thereon: 1° Witness N. (give questions for his cross examination); 2° Witness M. (give questions for his cross examination, and in a similar way the other witnesses.) Which questions, I, the undersigned advocate, present to the V. Rev. Judge and ask that they be put. "N. Advocate.

"The above questions being duly considered by the V. Rev. Vicar general he ordered question — and question — dropped, because irrelevant. Wherefore on these questions he does not intend to re-examine the witnesses, but on the others he decreed that the witnesses should be recalled and cross examined. Done &c. N. Vicar General,

N. Actuary."

415. "Consequently the V. Rev. Vicar general decreed to cite the accused Rev. N. and his advocate Rev. N. to hear the testimony of the witnesses to be recalled. Wherefore he ordered issued a citation to the aforesaid accused and his advocate to be served by N. N. personally or in their usual places of residence which citation is as follows: 'At the order of the V. Rev. Vicar general Rev. N. the accused and Rev. N. his advocate are cited to appear before the same V. Rev. Vicar general in the usual judgment hall on — at — o'clock; for the purpose of seeing the affidavits of the witnesses and their cross examination. And this citation the same V. Rev. Vicar general orders served personally or in the place of their usual residence. Given in the chancery on — day of — A. D.—. I, N.Vicar general. N. Actuary.' Which order after the aforesaid N. N. had fulfilled, he returned to me and reported that he had served the citation personally, leaving a copy. Done &c. I, N. N. messenger affirm as above.

N. Actuary."

In a similar way the witnesses are cited for the same time and place.

416. "On the — day of — A. D. —, Rev. N., the accused, and Rev. N., his advocate, appearing before the V. Rev. Vicar general, and likewise the witnesses previously examined in the cause of the said Rev. N. also appearing, Mr. N., one of the witnesses, was called and having taken the oath to tell the truth, after his previously given testimony was read to him word for word and he wished to make no changes in it, but on the contrary re-affirmed it, he was cross-questioned on the points proposed by the advocate of the accused, namely: 1° Asked? He replied. (Then give questions and answers.) Which being done on the order of the V. Rev. Vicar general I read his deposition to the said witness; and he being asked whether he wished to make any changes in it and replying that he did not, he was ordered to subscribe his deposition. Done this — day of — A. D. —. I, N. witness testify as above.

N. Vicar General. N. Actuary."

The same method is followed in regard to each witness. The previous examination is read to him before the cross-examination is made. A copy of this testimony may be thus given:

"On the — day of — A. D. —, when the cross-examination of the witnesses was completed, the V. Rev. Vicar general decreed that a copy of it, *prout de jure*, should be given the accused.

N. Vicar General.

N. Actuary."

"For the execution of the aforesaid decree on the same day Rev. N., advocate for the accused, was called and an authentic copy of the aforesaid cross-examination was given to him, for which he gave thanks. In testimony whereof, &c. Done &c.

I, N. Actuary."

417. After the defendant has cross-examined the witnesses of the prosecution, he presents the points of his defense to the judge and asks that his documents be received and his witnesses examined. Following is a suggestion for presenting points of defense though the articles should be drawn in accordance with the testimony the defendant expects to produce:

"Date ——. Comes now Rev. N., the advocate of the accused Rev N., and in court before the V. Rev. Vicar general presents the underwritten points of defense in favor of his client, and he insists and demands that concerning them all without exception all the witnesses whom he will later produce shall be examined, protesting and appealing against any refusal with however all due honor and reverence. The points are: 1° that the place mentioned as frequented by the accused is really not a saloon but a restaurant where the accused sometimes takes meals; 2° that what was said to be drunkenness on the streets was only the effect of a sickness to which the defendant is subject; 3° that on the Sunday mentioned, June 12, 1898, and also on the day before, the defendant was absent from home, being suddenly called to his sick brother and not being able to reach home; 4° that there is no ill-fame about the defendant's alleged eating before mass, and the two witnesses of the prosecution are known enemies of the defendant. The witnesses to sustain these points of defense he will present one after the other at the proper time, whom at present for just reasons he does not mention; but at the citation of the V. Rev. Vicar general he will name.

I, N. N. Advocate for Defendant."

"The above points of defense were presented and were accepted by the V. Rev. Vicar general, *si et in quantum*, and saving the right to

modify them, and at his order were by me placed in the acts. Done this — day of — A. D. —.

N. N. Actuary."

418. "On the — day of — A. D. — Rev. N., the advocate of Rev. N., the accused, was called before the V. Rev. Vicar general and was told to produce documents and witnesses to sustain the points of defense offered by him. And the aforesaid advocate produced Mr. N. to be examined on the first and fourth points. Immediately therefore the aforesaid Mr. N. was called and the oath to tell the truth being administered was taken by him on the holy gospels. Then he being asked regarding the first point of the defense, namely (as in n. 417 above) replied —. Asked regarding the fourth point of defense, namely (as in n. 417 above) he replied —."

"Which being done and his deposition being read to the witness &c, (add usual conclusion for testimony of a witness.)

"Immediately thereafter the aforesaid advocate produced Dr. N. to be examined on the second and fourth points of the defense, &c (as for the preceding witness.")

419. Thus the defense by witnesses will endeavor to establish its points, and documents may also be produced. It is evident that the defense should make the strongest showing possible. If the judge excludes necessary testimony or refuses to hear witnesses or to entertain valid exceptions against witnesses, or otherwise clearly shows himself prejudiced against the defendant, an appeal may be taken at once and a challenge of the judge be included. However the attention of the judge must first be called to the matter and correction asked.

Following is a form for appealing and challenging:

"Date ——. Comes now the Rev. N., advocate of the accused Rev. N., before the V. Rev. Vicar general, and protesting all due honor and reverence for the said V. Rev. Vicar general, in the name of his client says that the person of the V. Rev. Vicar general is suspected by him, because he showed ill-will against the defendant in rejecting as frivolous his exception against a witness because of enmity, and in ordering the actuary to record the testimony of said witness. Therefore he appeals *ad quem et quos de jure* from the aforesaid V. Rev. Vicar general because of the grievance already sustained; and combining a challenge with the appeal, for the aforesaid cause he recuses the said vicar general as a judge suspected by him; and he asks and wishes and insists that he shall no longer in any way interfere in this cause which is being tried against the defendant; and he protests the nullity of the process, if notwithstanding the present appeal and recusation, he should proceed further; nunc pro tunc appealing and asking urgently and most urgently that the original acts be sent up to the higher court. Done this — day of — A. D. —. I, N. N. advocate, appeal and recuse as above.

N. N. Actuary."

420. "Consequently the V. Rev. Vicar general ordered the aforesaid appeal to be placed in the acts, which I inserted, and he issued a decree as follows:

"Although the aforesaid appeal, made by Rev. N. advocate for Rev. N. defendant, is altogether frivolous and without foundation, nevertheless because of reverence for those to whom the appeal is taken, we yield to it, *si et in quantum*, and decree that the acts in the case be forwarded. Given in the chancery this — day of — A. D. —.

N. Vicar General.
N. Actuary."

421. When the defendant has seen the names of

the witnesses, he may notice some to whom he excepts. He should at once file his exceptions in writing. Following is a form:

"Date ——. Comes now before the V. Rev. Vicar general, Rev. N. against whom a criminal process is being instituted, and he says that he excepts against N. N. a witness produced against him, because the said N. N. is a great personal enemy (or is guilty of the crime of —, or is infamous in law or fact) which precludes his testimony being received. Therefore he proposes the following points of exception with this intention only that the testimony of the aforesaid N. N. may be rejected and held as null. Wherefore he does not intend that the aforesaid witness shall be punished either publicly or privately. The points of exception are: 1° That the said N. N. has been convicted of calumny against Rev. X. 2° That in the same libellous article the present defendant and exceptor was also abused. 3°, &c. The witnesses to sustain these points will be produced at the order of the court. Dated &c. I, N. N. except and accuse as above."

422. The bill of exceptions will be filed by the actuary, and the judge will order witnesses examined. He will then pass interlocutory sentence on whether the witness is to be rejected or not, for this exception really necessitates a trial within a trial. Should the judge allow the testimony of the witness to stand in spite of the proved exception, the defendant may appeal to the higher court from this interlocutory sentence, for it inflicts a grievous damage which cannot be remedied in the final sentence; since in fact the testimony in question may actually determine the final sentence against the defendant. It is true the council of Trent (*Sess. 23*,

c. 1, de ref.) changed the law and limited appeals, so that in criminal cases no appeal can be taken from an interlocutory sentence. But it did not absolutely forbid such appeals; it forbade them, "unless the grievance is such which cannot be repaired by the final sentence, or unless no appeal can be taken from the final sentence itself; in which cases the provisions of the sacred and ancient canons remain in full force." Hence in the very form of appeal from an interlocutory sentence it must now appear, not only that there is a serious grievance, but one which cannot be repaired by the definitive sentence. This definitive sentence means the one in the present trial, not on appeal to a higher court. The grievances which cannot be repaired by the final sentence are nowhere specified in law. Hence a careful showing should be made in the form of appeal showing the irreparable damage.

423. Following is a form for appealing against an interlocutory sentence which in a criminal case inflicts a damage irreparable by the final sentence:

"Date ——. Comes now before the V. Rev. Vicar general, the Rev. N. accused as above, and says that he is aggrieved by the said V. Rev. Vicar general in a decree by which he rejected as frivolous the said defendant's exception against the witnesses N. and N. (or express the grievance whatever it is.) Further he shows that this grievance is such that it cannot be remedied by the final sentence; for since the aforesaid witnesses have testified that the alleged crime was perpetrated by the said defendant, if their testimony is admitted, nothing but conviction can be expected by the said defendant. Hence because the said defendant sustains that he has suf-

ficiently proved that the aforesaid witnesses are personal enemies of him, and are infamous and disqualified; therefore with all due submission, not with the intention of protracting the trial, but of freeing himself from a grievance, the said Rev. N. appeals from the said decree or interlocutory sentence, and he wishes and insists that it be rescinded; otherwise he appeals to the metropolitan curia and the Holy See; and he asks that the original acts be sent up, urgently and must urgently. Dated this — day of — A. D. —. I, N. appeal as above."

"The above appeal was presented and on the order of the V. Rev. Vicar general was placed in the acts, and receive only according to law, this — day of — A. D. —. N. Actuary."

424. The judge may re-investigate and rescind his decree and the original case will then proceed, after proper entry is made in the records. But if the appeal is to be rejected, following is a form:

"Consequent thereto the V. Rev. Vicar general, having attentively considered the cause of the appeal produced by the said defendant, Rev. N., he found that it is not sustained in law or in fact; therefore he rejected it as frivolous and of no force and decreed, notwithstanding it, to proceed further. Which decree when it was made known to the said defendant, Rev. N., he taking an exception, acquiesced in it. (*Or*) he again appealed and again asked that the acts be forwarded, urgently and most urgently. Done this — day of — A. D. —.

N. Actuary."

425. After the defense has entered all its proofs, such as documents and witnesses, the fiscal procurator may reply and rebut them. To this rebuttal, the defendant in turn will make rejoinder. If necessary an adjournment may be asked and must be

granted for this purpose, which term is called *ad dicendum contra producta.* The entry in the acts may be as follows:

"On the — day of — A. D. —, the fiscal procurator presented certain replies to rebut the defense made by Rev. N., the defendant; which replies are as follows: (Insert them.) The foregoing replies on the order of the V. Rev. Vicar general were communicated to the advocate of the defendant. In testimony whereof &c. I, N. Actuary.

426. The rejoinder of the defendant may be thus entered:

"On the — day of — A. D. —, the Rev. N., advocate for the defendant, Rev. N., presented a rejoinder against the rebuttal adduced by the fiscal procurator, which rejoinder is as follows. (Insert it.) In testimony whereof &c.

I, N. Actuary."

If new proofs should be found for the prosecution they may be offered before the judge declares the process closed, or makes his summary. The defense may offer new proofs also later. The same method is pursued with them as with those proofs originally offered. They must be communicated to the opposite party.

CHAPTER XIII.

FORMS FOR DEFINITIVE SENTENCE.

427. When both sides have finished entering testimony, the vicar general or auditor will make a summary of the case. This practically closes the case for the prosecution, even though no declaration is made by the judge, closing the case. If an auditor was compiling the process he will now turn it over to the ordinary judge. The judge will then issue a citation to the accused and the fiscal procurator ordering them to make and present a final defense or argument, *ad allegandum in jure et in facto.* In doing this the defendant must have an advocate, or the judge is bound to appoint one for the purpose. (*Cf. Cum magnop. Art. 31.*) This defense, or argument on the law and facts of the case, must now be in writing. (*l. c. 32.*) The whole process, as well as the summary made by the auditor or judge, may be seen by the defendant's advocate in the chancery office. He may also copy it at his own cost. The advocate for the defendant on or before the appointed day files his written argument on the law and facts. Then the fiscal procurator files his written argument, which must be communicated to the defendant's advocate. This advocate makes a final argument, and the judge takes all the papers to prepare his sentence. When he is ready, he cites both the defendant or his advocate and the fiscal procur-

ator to hear the definitive sentence. One simple citation is sufficient, if it is properly served, for the trial is summary. If the parties after citation do not appear and assign no reason, sentence may be passed in their absence. The sentence must be read by the judge, seated, and for validity must be in writing.

428. Following is a form for citing the defendant to hear sentence. A similar form may be used to cite the fiscal procurator:

"Thereafter the V. Rev. Vicar general wishing to proceed to a final sentence summoned N. N. a public court messenger and committed to him a citation of the following tenor: The Rev. N. defendant and Rev. N., his advocate, and also the diocesan fiscal procurator N. N. are cited to appear before the V. Rev. Vicar general at —o'clock, on the — day of — A. D. —, in the hall of judgment in the episcopal residence, to hear the definitive sentence then to be pronounced in the case tried against the said defendant. And the aforesaid V. Rev. Vicar general orders this citation served personally on the aforesaid persons or in their place of usual residence. Given at — on the — day of — A. D. —.

N. Vicar General,
N. Actuary."

"Therefore the aforesaid N. N. messenger, having fulfilled his commission, returned to me as actuary and reported that he had served the aforesaid citation, as was ordered, personally on the aforesaid Rev. N. and Rev. N. Done this — day of — A. D.—. I, N. messenger, affirm as above.

I, N. Actuary."

429. Following is a form for beginning a definitive sentence in a criminal case. The words "warned

and given the canonical precept" may be omitted if the trial was begun without warning. (*See n. 334.*)

"In the name of God, amen. We, N. N. ordinary (or delegated) judge seated in our tribunal, having seen and carefully considered all and singular the matters in the cause and causes tried before us (or our auditor, N. N.) concerning the (here mention the crime concerning which the trial was had) in regard to which crime the Rev. N. was defamed (warned and given the canonical precept); having seen and maturely weighed the depositions of the witnesses and other proofs against the said Rev. N. about the aforesaid crime; having seen and seriously considered the citation, examination and defense of the accused, and the said defendant having been sufficiently heard on all his points of defense; having seen all things that should be seen and considered all that should be considered in the case, having only God, the fountain of justice before our eyes, and invoking the sacred name of Christ, by this our definitive sentence, which we give in this writing, we say, declare, pronounce and give sentence that —."

430. Form for an absolving sentence when no crime was committed:

"In the name (as above in n. 429 to ——) we give sentence, that the aforesaid Rev. N. has not at all committed the crime with which he was charged; and therefore we absolve him as innocent and dismiss him from further trial. Thus and every other best way. This sentence was given, read and published in — on the — day of — A. D. —. Thus we have pronounced, seated in court.

N. N. Vicar General.
N. Actuary."

431. Form when the defendant has not been shown guilty:

"In the name (as in n. 429 to ——) we give sentence that the Rev. N. was not found guilty nor punishable by law; and therefore we absolve him from further trial and from any and every further process; and we impose perpetual silence on this case. Thus and every other best way. This sentence was given, read and published on the — day of — A. D. — in (place.) Thus we have pronounced seated in court. N. Vicar General.
N. Actuary."

432. Form for a sentence condemning the accused who was convicted by witnesses:

"In the name (&c as in n. 419 to give sentence) give sentence that the Rev. N., the accused, was and is through witnesses fully convicted of (mention the crime with its circumstances.) Wherefore we condemn him to the punishment imposed by the sacred canons in lib. — tit. — c. — (or our diocesan statutes, or threatened by our canonical precept) namely, (express exactly the punishment to be undergone.) Thus and every other best way. This sentence was given, read and published this — day of — A. D. — in —. Thus we have pronounced, seated in the tribunal. N. Vicar General.
N. Actuary."

If the accused has confessed the crime that fact may be inserted thus: "Give sentence that the Rev. N. has committed the crime of (express crime) of which he is convicted by witnesses and as he himself by his own mouth and willingly has confessed. Wherefore &c."

433. At times the canonical punishment is to be increased because of previous conviction or other circumstances; at times also it should be diminished because of alleviating circumstances. Following is a form for such cases:

"In the name &c (as in n. 429) we say, declare, pronounce and give sentence that the Rev. N. is convicted of (or is convicted and has confessed) the crime for which he was tried, namely (mention crime.) Therefore he is subject to the punishment decreed by the sacred canons (or diocesan statutes, or our precept) against such delinquents. But because the said Rev. N. is accustomed to offend by this kind of crime of which he was previously also convicted (or state other reason for increasing the punishment) therefore we declare the said punishment is to be increased. Wherefore we condemn him to (give exactly the punishment he is to undergo.)

But because (here appears the circumstance why punishment should be decreased) therefore we declare the severity of the punishment is to be somewhat relaxed in his case. Wherefore we condemn him &c. Thus and every other best way. This sentence was given, read and published this — day of — A. D. — in —. Thus we have pronounced seated in the tribunal.

N. Vicar General.
N. Actuary."

434. The actuary must record the sentence in the acts, which may be done as follows:

"The accused Rev. N. together with his advocate Rev. N. (or the advocate alone) and also the fiscal procurator appearing in court, the V. Rev. Vicar general (or the bishop) seated at the tribunal passed a definitive sentence absolving the said accused from all guilt under the charges (*or*) declaring that the accused is guilty of the crime of —— and inflicting the canonical punishment; which written sentence when he had pronounced vocally, he committed written to me, the actuary, ordering me to place it in the acts. In fulfillment of which command, I placed the said sentence in the acts, and it begins —— and ends —— and is of the following tenor: (insert it.) To

abundantly prove the authenticity of the aforesaid sentence, N. and N. asked for the purpose, have subscribed as witnesses. Done at — this — day of — A. D. —. I, N. Vicar General. I, N. was a witness. I, N. was a witness.

I, N. Actuary."

435. It is not necessary for the defendant to be present when sentence is passed though he should be cited. The "Cum magnopere," Art. 34, makes no mention of the defendant, but says his advocate and the fiscal procurator are to be present when the sentence is pronounced. The sentence is then made known officially to the accused, either by court messenger, or special messenger, or by registered mail (*Cf. Art. 14, "Cum magnopere."*) An exact account should be kept of the day and hour when the accused receives the *notification* of the sentence, for he is allowed ten days and only ten from this time in which to file his appeal with the judge *a quo*. When sent by mail such a record can hardly be gotten. The actuary should make the following entry in the acts.

436. "Thereafter the V. Rev. Vicar general ordered that the aforesaid sentence should be communicated to the accused, and calling N. N. a messenger, he committed to him and ordered him to serve an authentic copy of the said sentence on Rev. N. personally or in his usual place of residence. Given &c. N. Vicar General.

N. Actuary."

"Therefore the aforesaid messenger, N. N. having fulfilled his commission, returned and reported to me, as actuary, that on the — day of — A. D. —, at 10 o'clock a. m. he had served the aforesaid sentence,

as ordered on Rev. N. personally. Done this — day of — A. D. —. I, N. messenger affirm as above.

I, N. Actuary."

The "Cum magnopere" Art. 33, requires the judge to state in his definitive sentence of condemnation the canonical sanction or punishment attached to the crime committed. In some cases the law itself specifically states the punishment to be inflicted for the crime; in others the law states that the crime is punishable, but does not specify the punishment, leaving the ecclesiastical judge free to inflict whatever punishment he may deem just. Hence Art. 3 leaves the inflicting of punishment to the conscientious discretion of the ordinary. In such a matter it is better to err by leniency than by severity.

CHAPTER XIV.

PROCESS EX NOTORIO.

437. Although notorious crimes may be punished without following the regular process of law, (*Cf. n. 335 above*,) still it is required, 1° that the crime be really notorious, i. e., committed in a public place and in presence of a large number of people, 2° that by two witnesses the notoriety itself be proved, 3° that there also be certainty of the malice of the délinquent, 4° that the delinquent be cited to show cause why sentence should not be passed on him. A crime seen by several officials *in flagranti* may be considered notorious and needs no regular process if the delinquent is brought before the judge immediately. If the crime is committed flagrantly in presence of the judge himself seated in court, sentence may at once be passed in a decree and in it mention be made of the flagrancy of the crime. But if the crime was committed in the presence of other witnesses these witnesses must testify to the flagrancy; and if the accused denies the crime he must be given an advocate and opportunity to defend himself. (*Cf. Clarus in praxi crim. q. 8; Reiffenstuel, l. 5, t. 1, n. 268.*) Hence the "Cum magnopere" had better be used in flagrant cases, except contempt of court. If the crime is committed before a judge out of court, the regular process must be followed. (*Ibidem.*)

438. Following is a form for the acts in notorious cases:

"In the name of the Lord, amen. This is a criminal process by way of notoriety against Rev. N. Since it has come to the knowledge of the V. Rev. Vicar general that the said Rev. N. in the public street before a large number of persons wantonly and maliciously struck the Rev. X. in such a way that the crime committed by him can in no way be concealed or denied; therefore in order to fulfill his duty the said V. Rev. Vicar general decreed to proceed by way of notoriety against the said de nquent Rev. N. and to take information concerning the notoriety; wherefore he called me to his room where he erected his tribunal and having deputed me, already a sworn notary, as the actuary for the case, he decreed to proceed by citing N. N. and N. N. as witnesses, and he ordered the following citation served on the said witnesses personally or in their usual place of residence by the court messenger N. (Then follow the citation, and return by messenger in usual form.) Done at — this — day of — A. D. —.

N. Vicar General.

N. Actuary."

439. "On the — day of — A. D. —, in —, N. N., a witness summoned and appearing before the V. Rev. Vicar general, and having taken the oath to speak the truth, deposed and said:

Q. What is your name? A. ——. (Then the general questions.)

Q. Do you know of any unusual occurrence or scandal having occurred in your town? A. ——.

Q. How, when and where did it occur? A. ——.

Q. How do you know? A. I was present.

Q. Who else was present? A. ——.

Q. Is this well known and notorious? A. ——.

Q. What do you understand by notorious? A. —.

"Which being done &c." (Close as usual for examination.)

In the same way one or two more witnesses are

examined on the *notoriety* of the crime. Then the judge declares the notoriety to exist and orders the delinquent cited:

"Consequently the V. Rev. Vicar general having maturely considered the depositions of the witnesses, pronounced that notoriety of the alleged crime existed; and he decreed to proceed further according to law. Wherefore he ordered the court messenger, N. to serve personally on Rev. N. or in his place of usual residence a citation to appear and show cause why he should not be punished for the said crime, which citation is as follows: (Enter citation and return by messenger in usual forms.) Done &c. Date &c. Signed."

440. "On the — day of — A. D. —, in — the aforesaid Rev. N. was called and appeared before the said V. Rev. Vicar general, the said Rev. N. being the person who, as is found in the acts, notoriously struck Rev. X. When, therefore, the V. Rev. Vicar general had admonished him he absolved him from the excommunication with reincidence to the effect only of allowing him standing in court, and then having spoken to him of the crime he had notoriously committed, the delinquent was asked why he should not be condemned to the ordinary punishment. He replied ——. Then his deposition having been read to him he was ordered to sign it. I, N. testify as above.

N. Vicar General.

N. Actuary."

441. The sentence can be passed immediately as follows:

"This is a definitive sentence in a criminal case passed by way of notoriety against Rev. N.

"In the name of God, amen. We, N. N. ordinary (or delegated) judge seated in our tribunal, having seen and maturely considered all and singular the matters in the cause of the Rev. N. who is charged with noto-

riously having struck Rev. X; having seen and weighed the depositions of the witnesses to the notoriety of the said crime; having seen the citation of the accused and his deposition and reasons why he should not be sentenced; having seen what should be seen and considered what should be considered in this case, having only God, the fountain of justice before our eyes, and invoking the holy name of Christ, by this our definitive sentence which we give in writing, we say, declare, pronounce and give sentence that, since it is notoriously certain that Rev. N. struck Rev. X., therefore he can and ought to be punished by way of notoriety and without the solemnity of law. Wherefore we condemn him to the punishment inflicted by law — (mention it) and therefore he is (excommunicated *or* mention exact punishment.) Thus in this and every other best way. This sentence was passed, read and published, on the — day of — A. D. — in —. Thus we pronounced seated at our tribunal.

N. Vicar General.
N. Actuary."

The sentence is recorded as in n. 434 and is made known to the condemned as in n. 436 above. No appeal is allowed in notorious cases.

CHAPTER XV.

FORMS FOR APPEALS.

442. If an appeal is taken in court as soon as the sentence is pronounced, no set form is required. The appellant will simply say: "I appeal to the higher court and ask that the acts be sent up." The actuary will then make this entry:

"When the aforesaid sentence was read and published to the said accused, Rev. N., he appealed and asked that the acts be sent up; to which the V. Rev. Vicar general replied that he would do what he judges the law requires. Done at — this — day of — A. D. —. I, N. appeal and ask that the acts be sent to the court of appeal.

I, N. Actuary."

But if the defendant does not immediately appeal, he can within the ten days file a notice of appeal in the following form:

"On the — day of — A. D. — in — comes the Rev. N. with the witness undersigned, (witnesses are not strictly necessary) and before the V. Rev. Vicar general says he has been grievously injured by the sentence passed against him on the — day of — A. D. —; therefore he appeals from it and asks that the original acts be sent to the higher court, earnestly, and most earnestly. In testimony whereof, I, N. appeal and ask as above. N. Witness. N. Witness."

"The above appeal was presented and admitted *si et in quantum*, and inserted in the acts on the order of the V. Rev. Vicar general, who replied that he

would do what is required by law. Done at — this — day of — A. D. —. I, N. Actuary."

443. If for some reason such as sickness a person cannot appeal before the judge *a quo* he may appeal within the ten days before several honest men in public and in writing; these men should sign the appeal as witnesses. Following is a form:

"I appear to-day, the — day of — A. D. — personally, before you N. and N. and being defendant in the case of — (state the case) and feeling that I have been seriously injured by the sentence passed against me in the aforesaid cause by the V. Rev. Vicar general on the — day of — A. D. — or other time as mentioned therein; and because I have not committed the crime and undefended and unheard and illegally have been condemned, and for other reasons which will be given in proper time and place; and because further, on account of sickness (or state other reason) I am not able to appeal before the said Vicar general, I appeal before you as honest men to the Holy See (or the metropolitan curia) and with this my protestation I ask that you give a certification to this my appeal. In this and every other best way. I, N. appeal and ask as above."

"On the same day and in the same place as above we the undersigned citizens of N— certify unto whom it may concern and on request we testify that N. N. on the aforesaid day and in the same place personally appeared before us and alleged the aforesaid reasons for not appealing before the judge *a quo*, and he asserted that he was aggrieved, that he appealed and asked as in the writing signed by his own hand more fully appears; and this he did before also the undersigned witnesses. In testimony whereof we give these testimonial letters. I, N. a witness. I, N. a witness."

444. The judge *a quo* by article 38 of the "Cum magnopere" is obliged in case of appeal to send forthwith the original acts of the case to the higher court. Formerly he gave the appellant only a copy. The original of the process, the summary of it, the defense and the sentence must be sent up. The judge *a quo* may accompany the acts with a letter, taking the place of the *apostoli* no longer in use. Following is a form for such letter, especially in an appeal from a decree or interlocutory sentence:

"When Rev. N. on the — day of — A. D. —, appealed before us from a sentence (or decree) passed by us on — as appears in the acts, and he also gave a reason for the appeal as is contained in the acts; we rejected his appeal and the reason for it as of no value and again we reject them. But because a second time he appealed against our rejection and asked that the acts be sent up, we herewith transmit them and refer and forward the cause concerning this point to — (mention the higher tribunal) and successively to others as by law it may devolve. But we do not intend thereby to dismiss the aforesaid accused from our jurisdiction, but pronounce that we wish his case prosecuted and determined according to law. Given at — this — day of — A. D. —.

N. Vicar General.

N. Actuary."

445. Following is a form in sending up the acts after an appeal from a definitive sentence:

"Since we passed a definitive sentence in the case of Rev. N. who was defamed (accused) of crime, and since the said Rev. N. has appealed from our sentence to the metropolitan curia (or other court) and successively to the Holy See; we, as is right, deferring to such appeal, dismiss the said accused and

his cause with the original acts and send them up to the said metropolitan curia (or other court.) Given at — on the — day of — A. D. —.

N. Vicar General in the Diocese of N.

N. Actuary."

The above forms may be used for appealing also in civil cases; but the civil matter on trial should be distinctly specified instead of the crime. As soon as the appeal is made known to the judge *a quo*, the sentence is suspended until reviewed by the higher court. The definitive sentence should not be executed before the limit for appealing has expired. When, however, an appeal is taken against an extrajudicial sentence or grievance, the decree is suspended only when the higher court has accepted the appeal. In such a case the judge *a quo* is also obliged to send up the original acts and may be inhibited from proceeding further. (*Ad militantis, n. 45.*)

436. Following is a form for appealing from an extrajudicial grievance:

"On the — day of — A. D. — in —, comes the Rev. X. and before the V. Rev. Vicar general N. N. (Most Rev. Bishop) says that he has been and is grievously injured by a certain decree (or order) issued to and concerning him on the — day of — A. D. —, and received on —, which decree is to the effect that (here state exactly the grievance, for instance,) the Rev. X. must pay $300, for building an asylum, within thirty days under pain of suspension, and he further shows that he is not obliged in law or justice to pay such an amount and is unable to pay it, and therefore he appeals to the metropolitan curia from this grievance extrajudicially inflicted, and he asks that the original records in the matter

be sent up to the higher court, earnestly and most earnestly. In testimony whereof. I, N. appeal and ask as above. N. witness. N. witness."

"The above appeal was presented and admitted *si et in quantum*, and made of record on the order of the V. Rev. Vicar general, who replied that he would do what is required by law. Done at — this — day of — A. D. —.

N. Vicar General.
N. Actuary."

An extrajudicial appeal is tried before the judge of appeal as in a court of first instance. In giving notice to the judge of appeal a copy of the appeal as lodged in the lower court should be offered. It is safer to appear personally or by advocate before the higher court when first the appeal is introduced. An inhibition should be asked against the lower court or the bishop taking further action.

CHAPTER XVI.

THE ACTS BEFORE JUDGE OF APPEAL.

447. When the notice of appeal has reached the judge of the higher court he will at once enjoin on the appellant that within thirty days he must select an advocate who is subject to approval of the higher court. If the appellant allows this peremptory term of thirty days to elapse without notifying the court of his selection or regarding an impediment why he cannot, the judge of appeal will declare the appeal extinct. ("*Cum magnopere*" *art. 39. 40.*) It is now certain that in a criminal case the appellate judge sets the time for introducing the appeal, and that an appeal is not extinguished except by his declaratory sentence to that effect. The judge of the lower court can no longer make this declaration. On the other hand it is certain that the judge of the lower court after an appeal has been taken cannot proceed to execute his sentence until he has obtained a decree declaring the appeal extinct. The judge of appeal may issue inhibitions to the lower court, and at the request of the appellant should do so if there is suspicion that an attempt will be made to execute the sentence. At the request of the appellant the judge of appeal before all else will revoke attentates, or things done against the appellant within the ten days allowed for a suspensive appeal or after notice of appeal has been given. In the court of appeal the same method will be followed as

in the lower court. (*l. c. art. 41.*) The fiscal procurator of the higher court will represent the lower court, unless another to act with him is requested by the appellee and approved by the judge of appeal. What has been proved in the lower court need not be proved again; but new testimony may be introduced, which is done as in the lower court.

448. When an appeal from an interlocutory sentence is introduced the acts may be thus recorded in the court of appeal:

"In the name of the Lord, amen. Since the Rev. N. of the diocese of N. (or N. the advocate of Rev. N.) appeared before the V. Rev. N. N., Vicar general of the arch-diocese of N., and showed that he has appealed from an interlocutory sentence of the V. Rev. N. N., vicar general of the same diocese, which sentence was concerning (state sentence;) and since the said appellant, Rev. N., insisted that he should be admitted before the said V. Rev. N. N., vicar general of this arch-diocese, to prove his cause and the reasons advanced by him to sustain his appeal; the said V. Rev. Vicar general, having summoned me, a public actuary of this curia, decided to proceed according to law. Done at — this — day &c.

I, N. Vicar general of the Arch-diocese of N.

N. Actuary."

"Consequently the same V. Rev. Vicar general, having seen the reasons for the appeal produced by the said appellant, Rev. N., (or his advocate,) pronounced that they are legitimate in law; and to see whether they are founded on fact, at the order of the same vicar general, the said appellant, Rev. N., (or his advocate) was called before the said V. Rev. Vicar general, and he said he was ready to prove the cause expressed in his bill of appeal and he mentioned N. and N. as witnesses to prove his first

article. (The actuary will record witnesses and documents offered by the appellant to sustain his appeal.) All of which were received and admitted by the V. Rev. Vicar general of this arch-diocese, *si et in quantum* and the said vicar general decided to proceed further according to law. Done at — this — day of — A. D. —.

I, N. Vicar General of the Arch-diocese of N.
N. Actuary."

449. If the judge of appeal thinks the reasons for appeal are not such for which the law allows an appeal from an interlocutory sentence, instead of saying: "He pronounced that they are legitimate in law, as in the above number, the record will be:

"He pronounced the reasons for the appeal are not legitimate in law; consequently he decreed to remit the said appellant, Rev. N., to his ordinary judge, and he ordered that these original acts of the present decree and of the process be sent to the aforesaid ordinary judge. Done at — this — day of — A. D.—.

N. Vicar General of Arch-diocese of N.
N. Actuary."

450. When the reasons for the appeal are found legitimate, the appellant must also show that they exist in fact. Taking the case of appeal against a judge allowing enemies to be witnesses, mentioned above in n. 419, the reason for appeal is sufficient in law; but the appellant must show that they are actual enemies. The acts will be thus written:

"On the — day of — A. D. —, at —, when the said appellant, Rev. N. appeared before the V. Rev. Vicar general of this arch-diocese, the latter decided to proceed to the examination of witnesses and documents produced by the said appellant to show that his cause subsisted in fact. Wherefore X., a witness

assigned to prove the first article was called, who being duly sworn, deposed and said: Q. —. A. —."

The forms for examining witnesses &c. are the same as given in the preceding chapters. The process is substantially the same as in the lower court. When the parties have rested their case, they are cited to hear sentence.

451. Following is a form for sentence in an appeal from an interlocutory decree or sentence:

"In the name of the Lord, amen. We, vicar general and ordinary judge of the arch-diocese of N., having seen the appeal interposed by Rev. N. an accused person, concerning an interlocutory sentence passed by the V. Rev. N. vicar general and ordinary judge of the diocese of N. on the — day of — A. D. —; having seen the reasons advanced by the said Rev. N. to sustain his cause; having seen and maturely considered the depositions of the witnesses and other proofs offered by the appellant, by this our sentence we pronounce, declare and say, that interlocutory sentence was ill passed by the aforesaid judge and the appeal is well taken. Wherefore we call the aforesaid case from the V. Rev. N. vicar general of the diocese of N. to our metropolitan tribunal. Given at — this — day of— A. D. —.

N. Vicar General of Arch-diocese of N.

N. Actuary."

452. But if it is found that proof of the fact is not sufficient and the sentence of the lower court is to be sustained then the sentence will read:

"In the name (&c. to declare and say) declare and say that interlocutory sentence was well passed by the aforesaid judge, and an appeal was ill taken by the said appellant, Rev. N. Wherefore we decree and pronounce that notwithstanding the aforesaid appeal,

the said judge should proceed with the case according to law. Given (&c. as above.)"

In case the lower judge is sustained all the acts of the appeal should be sent down to him with the sentence of the appellate court, and they are all to be inserted in the acts of the case in the lower court. But if the sentence is in favor of the appellant, the court of appeal will hear the case from the point of appeal and give final sentence as a court of first instance.

453. When an appeal is taken from a definitive sentence the acts of the appellate court will read:

"In the name of the Lord, amen. Since the Rev. N. of the diocese of N. as appears from the notice of appeal filed by him before the V. Rev. Vicar general N. of the arch-diocese of N. has appealed against a definitive sentence passed on him in a criminal case by the V. Rev. N. vicar general of N.; and since he presents the Rev. X., as his advocate and asks that he be approved by the court of appeal with the intention of prosecuting the said appeal; since, moreever, the original processual acts of the curia of N. including the process, its summary, the defense and the definitive sentence have been transmitted to and are now before the said V. Rev. N., vicar general of this arch-diocese; therefore the said V. Rev. N., vicar general of this arch-diocese, called on me a sworn notary to be actuary for this case and decreed to proceed according to law in the case of the said appeal. Done at — on the — day of — A. D. —.

N. Vicar General of the Arch-diocese of N.

N. Actuary."

"Consequently the aforesaid Rev. X. was approved and the aforesaid appellant Rev. N. was ordered by the said V. Rev. Vicar general to present what articles he had, if any, to show the injustice of

the aforesaid sentence from which he appealed. Thereupon he presented some points in a writing which begins —— and ends ——, and which on the order of the V. Rev. Vicar general was placed in the acts numbered ——. Done at — this — day of — A. D. —. N. Metropolitan Vicar General.

N. Actuary."

Thereafter the new testimony is introduced and the trial conducted as in the lower court, the metropolitan fiscal, or other as above, n. 447, representing the lower court. If, however, the appellant has no new testimony to present then the acts will read:

"Consequently (&c. to Thereupon.) But the appellant replied that he had nothing to add to what is contained in the acts, from which the injustice of the sentence will sufficiently appear. Done &c."

In this case the judge will examine the acts and when ready will cite the parties for sentence.

454. It should be noted that the judge of appeal becomes the judge of the principal cause and must pass definitive sentence. Unlike the state courts he does not order a new trial by the lower court, but himself becomes the judge and gives sentence. Following is a form for definitive sentence on appeal:

"Case of Diocese of N. vs. Rev. N. Sentence in the second instance.

In the name of the Lord, amen. We, N. N., vicar general of the arch-diocese of N., seated in our tribunal, having seen and attentively considered all and singular the things done in the cause and causes tried before the V. Rev. N., Vicar general of the diocese of N., against the Rev. N. who was defamed (or accused) concerning the crime of (express crime or charges exactly;) having likewise seen all things produced in law and fact in favor

of the said Rev. N.; having seen also the definitive sentence passed against him by the said V. Rev. Vicar general and ordinary judge of the said diocese; having finally seen the appeal interposed before this metropolitan court, and having considered the reasons, laws and proofs produced before us to sustain the said appeal, and the argument of the fiscal procurator against it; having seen what should be seen and maturely considered what should be considered in the matter, having only God, the fountain of justice, before our eyes, by this our definitive sentence which we give in writing, invoking the holy name of Christ, we judge, say, pronounce and declare that the sentence of the lower court was well passed and the appeal ill taken. Wherefore we confirm the sentence already pronounced by the judge of the diocese of N. viz., that Rev. N. is guilty &c. (mention crime) and therefore we condemn him to the punishment imposed (express punishment exactly.)

Thus and every other best way. This sentence was passed, read and published at — this — day of — A. D. —. Thus we have pronounced seated in our tribunal.

N. Vicar General of the Arch-diocese of N.

N. Actuary."

The sentence will be entered in the acts and served on the defendant by the higher court as in the lower court. A copy will be sent to the judge from whom the appeal was taken.

455. If the sentence of the lower court is to be reversed then after "we judge — and declare" it will read:

"That the sentence of the lower court was ill passed and the appeal well taken. Wherefore we reverse (or modify) the sentence pronounced by the ordinary judge of the diocese of N. and we give sentence that the Rev. N. is not found guilty nor pun-

ishable by law; and therefore we absolve him from further trial, and we impose perpetual silence on this case. Thus and every other best way. This sentence was given, read and published at — on this — day of — A. D. —. Thus we have pronounced seated in our tribunal.

N. Vicar General of Arch-diocese of N.

N. Actuary."

456. When an appeal has been deserted, the judge of appeal, on application by the judge of the lower court or his representative, will issue a decree declaring the appeal extinct. He should not, however, issue such a decree of his own motion. Following is a form:

"On the — day of — A. D. — in —, the Rev. S., fiscal procurator of this arch-diocese of N. appears before the V. Rev. N., vicar general of this arch-diocese and appellant judge in the case of the Diocese of N. vs. Rev. N.; and the said fiscal procurator for and in the name of the diocesan curia of N. shows that on the — day of — A. D. — a notice of appeal was filed by the said Rev. N. with this metropolitan curia in the aforesaid case, and the said fiscal procurator further shows that the time allowed by law, in "Cum magnopere" art. 40, for the perfecting of the appeal is now expired, that is thirty days from ——, when this metropolitan curia ordered that the appeal be perfected by the said Rev. N. appointing an advocate to represent him; and the said fiscal procurator further shows that no further action looking to the perfecting of said appeal has been taken by the said Rev. N., nor has any excuse been offered or accepted by this court asking for an extension of the peremptory term, nor has any such extension been granted. Therefore the said fiscal procurator for and in the name of the diocesan curia of N. asks and insists that a decree be issued by this metropolitan

curia declaring extinct the said appeal of the said Rev. N., and referring the sentence for execution back to the said diocesan curia of N. I, S. fiscal procurator ask as above. N. Actuary."

"The above application was presented and admitted, *si et in quantum*, and made of record on the order of the said V. Rev. Vicar general, who decided to proceed according to law. Done at — this — day of — A. D. —.
N. Vicar General, Arch-dioc. of N. N. Actuary."

"Consequently the same V. Rev. Vicar general, having carefully considered the above application for the extinction of the appeal of Rev. N., issued a decree as follows: 'In the name of the Lord, amen. We, N. N., vicar general of the arch-diocese of N. and ordinary judge, having seen the notice of appeal interposed by the Rev. N., an accused person, convicted in the diocesan curia of N. of the crime of — and sentenced therein to (give punishment); having considered attentively the decree of this metropolitan curia ordering the said Rev. N. to perfect his appeal within the thirty days allowed by law, which peremptory term in this case expired on —; seeing, moreover, that the said appeal was not perfected within the peremptory term and no excuse having been given; we therefore on the motion and application of the Rev. fiscal procurator of this metropolitan curia, for and in the name of the diocesan curia of N., do hereby declare and decree that the aforesaid appeal of Rev. N. against the sentence of the diocesan curia of N. is extinct and we remand him, the said Rev. N., back to the said diocesan curia for the execution of the definitive sentence passed upon him. Given at — on this — day of — A. D. —.
N. Vicar General, Arch-dioc. of N. N. Actuary."

The original acts of the diocesan curia will then be returned to it, together with a copy of the acts of appeal and of the above decree.

CHAPTER XVII.

CIVIL PROCESS IN CHURCH COURTS.

457. Every process which is not criminal is called civil; therefore whenever action is taken not for public punishment, but for any other purpose the process is a civil one. Many points are common to both the civil and criminal process. Hence it will be necessary only to point out some special features of the civil process and give forms for them. But first a summary of the regular civil process is given.

458. The regular civil process begins with the libellus or filing of the bill by the plaintiff. He appears personally or by his procurator before the judge to whom he presents the bill signed by himself wherein he asks that another give him something or that something be done for his benefit. This bill must be clear, so that the defendant may know exactly what he has to meet. If it is obscure the judge *ex officio* is obliged to require that it be modified. The plaintiff is obliged to present his bill in writing and the judge should not admit the case without it. (*Cf. Lib. 2 Decret. t. 3, c. 1.*) The judge may not refuse to accept a proper bill of complaint. The bill consists of three parts, the narrative of facts, the basis or reason for concluding and the conclusion. The narrative part should contain the name of the judge or the official position of him before whom the action is taken, the name of the plaintiff, the name

of the defendant and a summary of the facts, showing in a civil case just what and how much is asked. In a criminal bill, such as is filed by the fiscal procurator, it is also required that the place where and the year and month when the crime was committed be inserted. (*Cf. form in n. 346, above.*)

It is not necessary to insert the day of the crime. But in a civil bill the place and time as a rule need not be inserted; except in a civil bill for slander or libel, wherein they must be inserted. (*Cf. Smalzgrueber, l. 2, t. 3, n. 1.*) If the place and date are omitted from a criminal bill or a civil bill for slander, the bill is null and void even without objection by the defendant. (*Cf. Lex libellorum 3, ff. de accusationibus; Doctores communiter.*) The kind of action intended need not be expressed in the bill before the church courts.

459. The conclusion, or just what is asked, must of necessity be clearly expressed in a civil bill, for the sentence must be based on this request and be conformed to it. It is customary to add to the conclusion in a civil bill a saving clause like the following: "On all these matters I ask that law and justice be administered by every best way and form possible by law, statute or custom." But such a clause cannot make good a bill null and void in essentials, such as omitting to state exactly what is required or sued for from the defendant. But if the principal thing is mentioned such a saving clause will carry along the accessories. The reason of the claim must for validity be stated in a civil bill. Hence it is not enough to state that the plaintiff sues for a certain sum of money; but further it must be

stated why he sues. For instance, because of a promise to pay borrowed money, because of rent due and unpaid, because of ownership of an article claimed also by defendant. The judge is obliged *ex officio* to refuse a civil bill in which the conclusion and reason for concluding are not clearly expressed. However in a criminal bill, neither the conclusion, nor the reason for it need be expressed. For when a crime has been committed, the law itself proclaims the conclusion or punishment to be inflicted.

460. A civil bill may be amended in points not substantial with permission of the court at any time before the sentence, on condition that the expenses of the other party caused by the amendment be paid before the amendment is allowed. But if the thing asked for or the reason of asking were changed, the change would be substantial and cannot be made after the answer of the defendant has been filed in court, as is commonly held to-day. In such case a new trial must be begun. But in any case, all expenses of the other party must first be paid. As the bill itself must necessarily be filed in writing, so for validity must all amendments be filed in writing. No one but the plaintiff himself or his procurator can substantially change his bill. His advocate has no authority for such a matter. The bill and all substantial amendments must be signed by the plaintiff who brings the suit, not by his advocate. (*Cf. Smalzgrueber, l. 2, t. 3, n. 13.*)

461. When the bill of complaint is presented to the judge, at the request of the plaintiff he issues a citation to the defendant, or if a bishop, then to his procurator, to appear and answer the bill within a

certain time, usually twenty days for appearance and twenty more days for the answer. At the same time a copy of the bill, to be furnished in duplicate by the plaintiff, is served on the defendant. (*Cf. Reiffenstuel l. 5, t. 1, n. 408.*) This is the usual practice to-day.

The citation issued to the defendant is to be served personally if possible; otherwise in his place of usual residence and in either case the messenger serving it must certify to such service in his return. The practice to-day, especially in the United States, is to issue in civil cases only one peremptory summons or citation and in it to warn the defendant that unless he appears within the specified time and files his answer, the bill of complaint will be taken for confessed. This is the punishment of contumacy of the defendant. However no declaration is made by the judge, except on motion of the plaintiff. If after declaration of default and consequent confession, the defendant later appears and wishes to have the default set aside and to contest, he must first purge himself of contempt by giving a satisfactory reason for not appearing and must also pay the costs of the other party caused by his neglect. The judge may then allow him to file his answer.

462. Before the defendant files his answer to the bill, he may file certain exceptions, either first of all and within twenty days contesting the jurisdiction of the judge, or showing that the case should not be heard because it is *res judicata*, or ended by prescription, or for some other reason. The defendant at this stage may also ask that the judge demand of the complainant a deposit as security for costs,

especially if the plaintiff cannot be reached after the ecclesiastical trial is concluded. A prudent judge will require a deposit or other security for costs especially in the United States. This may well be said to take the place effectually of the *juramentum calumniæ*, no longer in use with us.

463. When the appearance of the defendant has been entered in the court, he files his answer in duplicate to the bill of complaint, one copy for the court and one for the plaintiff. This answer may be filed in court at any time within the stated time and the presence of the other party is not required. This answer makes the *litis contestatio*. The answer of the defendant should reply to the bill, clause for clause, for what is not denied in the bill is taken for confessed. Hence with us the *positiones* are no longer in use, since they are practically settled in the bill and its answer. The points denied in the answer are the points that must be proved by testimony. For this purpose a certain time is set for the parties to present their proofs and witnesses are cited and examined in the presence of both parties. If witnesses at a distant place are to be examined it may be done by a commissioner, who will inform both parties of the place and date of the examination in order that they may be present.

464. Thereafter on the appointed day occurs the publication of the testimony taken on both sides. Then takes place the rebuttal testimony, which on the other side is met by other testimony, all of which is then published. When all proofs are in and the parties declare that they rest their case, the judge will declare the case closed. This *conclusio in causa*

shuts out further testimony by either side in a civil case. The parties are then cited to appear on a certain date with their advocates and argue the case before the judge, both orally and in writing, on the points of law and fact. The judge then takes the case with all papers under advisement and when he has prepared his sentence he orders the parties cited for a certain day to hear it. On the appointed day the judge seated will read his definitive sentence, which must either condemn the defendant to do or free him from doing what was asked in the bill of complaint. The judge cannot go outside the bill, and in deciding must depend only on the evidence presented. The usual ten days is allowed after sentence has been communicated to the parties before its execution takes place. Within that time notice of appeal may be given to the judge who gave the sentence. Either party may appeal in a civil case.

465. The curia for a civil case is the vicar general (or bishop) as ordinary judge and a notary to write the acts. Each party has its advocate. The fiscal procurator is not present except he acts as advocate when the diocese is a party to the suit. The actuary will write his acts as in a criminal case, simply changing the names and recording a civil instead of a criminal case. The forms for an auditor or judge-delegate are the same. So also are the citations to the parties and to witnesses. The examination of witnesses is in form the same in a civil as in a criminal case except that to-day both parties are usually present when the examination takes place. Remissorial letters are also the same. The judge in a civil case may be challenged as in a criminal one and

the ensuing process is similar. Arbiters are appointed and decide on the challenge, each party appointing one arbiter, the judge choosing neither. The form for drawing the beginning and ending of the definitive sentence, for appealing and for declaring the appeal extinct are practically the same in a civil as in a criminal trial. They were given in preceding chapters of the third part of this work.

466. It may be convenient to give a form for a civil libellus. A property case is supposed:

"To the diocesan curia of (name the diocese.) Most Reverend N. N., ordinary judge.

1°. Your orator, St. Mary's church and parish of the town of Y—, a regularly organized and recognized ecclesiastico-juridical person, through its rector, Rev. N., respectfully shows unto the curia that on or about the first day of August, 1890, the church and parish of St. John in the city of X, through its then pastor, Rev. A., borrowed of the church of St. Mary in Y— the sum of $5,000.

2°. Your orator further shows that the said Rev. A. gave his note as pastor for the said sum of $5,000, in favor of St. Mary's church, said note to be due and payable in three years from date, or Aug. 1, 1893.

3° Your orator further shows that the said note has not been paid, nor any settlement made therefor, although proper and explicit demand has been made for the same.

4°. Your orator further shows that since the said note was given, i. e., since Aug. 1, 1890, a change of rectors has occurred in St. John's church of X, and that the present rector of the said St. John's, Rev. W., has refused to pay or even to acknowledge as due the said note of $5,000 and the debt which it represents.

5°. Therefore your orator asks the aid of this diocesan curia in the premises and that the above

Rev. W. as rector of St. John's church, the defendant in this suit, may appear and answer this your orator's bill and that he may come to a fair and just accounting touching the amount due to your orator upon the note hereinbefore mentioned and the interest accruing thereon for the term of years since the said note was given.

6° And that he may be decreed to pay forthwith to your orator the amount which shall be found due to him thereon and the interest thereon, together with your orator's reasonable costs and charges in this behalf sustained; and that your orator may have such other and further relief in the premises as shall be agreeable to equity and good conscience, and that your orator may be granted whatever decrees, sentences and commands may be necessary or opportune in the premises for the obtaining his full rights and equities and all other remedies, not only as asked but also as may be better conducive to obtaining his full rights in any other way by law, statute or custom.

May it please the court, the premises being considered, to grant to your orator the writ of citation to be issued out of and under the seal of this court to be directed to the said Rev. W., rector of St. John's church in X., the defendant herein, thereby commanding him on a certain day and under a certain penalty personally to be and appear before this court, then and there to answer the premises and to stand to and abide by the order and decree of the court herein. And your orator will ever pray.
Dated Sept. 5, 1894.
Rev. N., rector of St. Mary's church for St. Mary's
Church in Y. A. B., Advocate for complainant."

467. Following is a form for a citation in the above case:

"Diocesan Curia of N—
V. Rev. N. Judge.
Civil Department.

To the Rev. W., rector of St. John's church in X., greeting. You are hereby notified that a Bill of Complaint has been filed against you in the diocesan curia of N—, civil department, by the Rev. N., rector of St. Mary's church in Y— as complainant, and that if you desire to defend the same you are required to have your appearance entered in this court within twenty days from this date and your written answer filed with the chancellor or actuary of this curia on or before the 15th day of October, 1894.

Hereof fail not under the penalties by law made and provided, and especially that of taking the bill for confessed. In testimony whereof.

N. N. Vicar General and Judge.

Given in N— this fifth day of Sept. 1894.

A. B., Advocate for Complainant.

N. Chancellor."

468. Following is a form for answer to the bill:

"Rev. N., complainant,
vs.
Rev. W., defendant.

Diocesan Curia of N—
V. Rev. N. N. Vicar General, Judge.
Civil Department.

Comes now the Rev. W. before this court to answer as defendant the bill of complaint herein filed by the Rev. N., and reserving all rights to take at any time exceptions allowed by law, now for answer says:

1° He admits that the church of St. Mary in Y— is a regularly organized parish, but denies that the church and parish of St. John in X— borrowed of the said St. Mary's church the sum of $5,000.

2° The defendant confesses ignorance as to whether or not the said Rev. A. gave his note for

$5,000 in favor of St. Mary's church; but he denies that he, Rev. A., did or could have done such an act as pastor of St. John's.

3° This defendant confesses ignorance as to whether or not the note in question has been paid.

4° This defendant admits that since Aug. 1, 1890, a change of rectors has occurred in St. John's church, and that the present rector, Rev. W. who is also defendant in this case, has refused to pay the said note for $5,000, and has even refused to acknowledge it as due.

5° Further this defendant answering says that the said sum of $5,000, alleged to have been borrowed for St. John's church, was never used for the said St. John's church. Neither was the said Rev. A. ever authorized by the proper diocesan and delegated authority to borrow the said sum of $5,000 for the said St. John's church.

The defendant, reserving to himself the right to make further answer when necessary to the bill of complaint, now charges and respectfully represents to the V. Rev. Judge that this suit was begun by the complainant temerariously and without foundation in law, much to the inconvenience, damage, injury and pecuniary loss and expense of the defendant. He therefore humbly prays to be hence dismissed with an allowance for his reasonable costs and charges and damages in this behalf most wrongfully sustained. Dated ——.

N. B., Advocate for Defendant.

N. W., Defendant."

469. The definitive sentence in the above civil case may be drawn as follows:

"In the name of God, amen. We, N. N. ordinary judge, seated in our tribunal, having seen and carefully considered all and singular the matters in the cause tried before us concerning the claim of St. Mary's church of Y., through its rector, Rev. N.

against St. John's church of X. for the sum of $5,000 and interest claimed to be due and owing because of a note given for said sum by the pastor of St. John's church, signed as pastor; having seen and carefully considered the bill of complaint, the answer thereto, and the depositions of witnesses, documents and other proofs advanced for and against the said claim; having heard and maturely weighed the arguments on the law and facts as presented by each side; having seen all that should be seen and considered all that should be considered; having only God, the fountain of justice, before our eyes, and invoking the sacred name of Christ, by this our definitive sentence which we give in this writing, we say, declare, pronounce and give sentence that: 1° The church of St. Mary of Y. on Aug. 1, 1890, lent to Rev. A., who was then pastor of St. John's church in X., the sum of $5,000. 2° That the said Rev. A. gave his note for $5,000, which he signed as pastor of St. John's church of X. 3° The said note or sum of $5,000 has not been repaid to St. Mary's church of Y. But, considering that the said St. John's church had no canonical permission to borrow $5,000, and to pledge itself for such sum; considering that the said $5,000 was not shown to have been used for St. John's church of X.; considering that a church is not held for the dereliction of its pastor, according to rule 76 in Sexto "Delictum personæ non debet in detrimentum ecclesiæ redundare;" therefore 4° The defendant in this case, the church of St. John in X., through its pastor, Rev. W., is not obliged or holden to pay the said $5,000, nor any part thereof, and we dismiss the said defendant with an allowance for his legal costs herein sustained. Thus and every other best way. This sentence was given, read and published in — on the — day of — 18 —. Thus we have pronounced seated in court.

N. Vicar General.
N. Actuary."

CHAPTER XVIII.

FORMS FOR SUMMARY CIVIL PROCESS.

469. The procedure under "Cum magnopere" is of obligation in all trials of criminal and disciplinary causes of ecclesiastics in the United States. It is in some respects a summary process, since on certain points it shortens the ordinary trial.

In criminal processes *ex notorio*, not only some but all the formalities of solemn or ordinary trials are dispensed with, except those which regard the establishment of the notoriety and the citation for the final sentence. Again in sentences *ex informata conscientia*, all formalities whatever of ordinary trials are omitted, and the sentences may be pronounced without any trial or judicial formality whatever. In fact they are extra-judicial sentences.

But in civil cases, the ordinary procedure outlined in the preceding chapter should be followed, except in the matters where by pontifical constitution a summary process is allowed. (*Cf. Clementina, Saepe 2, de Verborum Significatione; Clem. Dispendiosam 2, de judiciis.*)

470. A summary trial is one in which for the more speedy termination of the process, certain formalities are by law specifically allowed to be omitted. All essential forms must be retained and the proofs must be just as complete in summary as in ordinary trials. But according to the above Clementine constitution

in a summary trial, 1° no written libellus is required and the complaint may be made orally provided it is inserted in the acts; 2° no *litis contestatio* strictly is required, but when the judge has cited the defendant he may take testimony; 3° the proceedings may take place on court ferials, but not on Sundays or holydays of obligation; 4° no *conclusio in causa* is necessary, and the final summary should be made as short as possible; 5° no peremptory but only a simple citation to hear sentence is necessary; 6° the judge need not be seated in giving sentence. However both parties must be cited for trial, the proofs must be just as full and the right of defense just as unimpaired as in ordinary, solemn trials. Legitimate and reasonable exceptions and appeals must also be allowed.

471. The causes in which the law mentioned above allows a summary process are: All questions concerning elections to ecclesiastical offices or dignities; appointments to parishes or offices in the church; questions concerning tithes or means of support for incumbents of church positions; matrimonial causes. But when there is question of the *validity* or *nullity* of a marriage then the special matrimonial process ordered by Benedict XIV, *Dei miseratione*, must be followed. (*Cf. Marriage Process in U. S. by Rev. Dr. S. B. Smith. A very useful work.*)

Likewise a special process was ordered by Benedict XIV for causes concerning the nullity of a religious profession. A defensor is to be appointed in the same way (n. 82 above) as for marriage cases. (*Cf. Bull, Si datam; Bouix de Judiciis II, pg. 467.*) Finally, not only the above causes may be tried by

summary process, but also all questions or causes which depend or touch upon them.

In the same summary manner may be tried 1° causes of the poor, of widows, orphans, strangers and the miserable; 2° causes of religious; 3° questions of food, spoliation, deposit, rewards; 4° causes of small moment and also such as will not admit of delay because of imminent danger.

472. The actuary should begin his acts in a summary case thus: "This is a *summary civil process* concerning ex. g. certain exceptions made against the election (or nomination) of N. N. to the office of ——." Such a beginning will at once give notice that the process is summary, and mention of the matter to be tried will at once make evident whether or not the law allows a summary process for such a cause. The other acts are recorded as in ordinary civil cases, omitting those formalities specifically allowed by law to be omitted, and inserting "*summarie*" before "*prout de jure*" where that expression occurs.

473. Following is a form for entering an exception against the nomination or election of a person to office:

"Comes now the Rev. X. before the V. Rev. N., vicar general of the Most Rev. Bishop N., and says that great injury will result to the church if Rev. D. is nominated or chosen to the office of (mention the office, such as rector, canon, vicar general, bishop); and he states further that there is grave doubt whether he can be legally chosen. Wherefore to preclude all harm which might come to the church from such a nomination or choice, whose utility each one belonging to its body should procure,

he proposes against the aforesaid Rev. D. the following points of exception; and in these writings swears that he is not moved by any desire to calumniate nor any ill-will, passion or animosity against the said Rev. D., but only by zeal for the public welfare. Therefore also he does neither intend nor wish that the said Rev. D. shall be punished for anything contained in these exceptions, but only that he shall not be nominated or chosen to such dignity or office. And he further protests that if proper investigation according to law is not made of his exceptions which he lawfully proposes, and a nomination and choice is nevertheless in spite thereof made of the said Rev. D. then the said nomination and choice shall be null and of no value; and he appeals from it to the superiors as by law necessary. The points of exception are:

1° That the aforesaid Rev. D. is unfit and does not know what is necessary for such an office, namely, canon law and theology, and Latin.

2° That he was suspended formerly for cause.

3° That he is given to excessive drinking.

4° That by a writing which through another he had printed, he grossly abused ecclesiastical and apostolical authority, namely, (give place, date and circumstance of crime.) The witnesses and proofs to sustain the first point are: (Give names.)

Done this — day of — A. D. —, at —. I, X., except, protest, insist and appeal as above."

It should be recollected that crimes may always be urged by way of exception against the delinquent seeking preferment. No prescription can be urged by him in such a case even though it might effectually estop a criminal proceeding. (*See p. 494 below.*)

474. After a summary civil trial on this bill of exceptions or complaint, the judge may give sentence in the following form:

"In the name of God, amen. We, N., ordinary (delegated) judge, having seen and maturely considered all and singular the matters in the cause tried before us concerning the exceptions made civilly by Rev. X. against the nomination or choice of Rev. D. for the office of ——; having seen the citation to the said Rev. D., the depositions of witnesses and other proofs advanced for and against the said exceptions; having heard and carefully weighed the allegations of both parties; having considered all that should be considered; having only God before our eyes and invoking the sacred name of Christ, by this our definitive sentence which we also give in writing, we say, declare, pronounce and give sentence that: 1° A canonical impediment has been conclusively proved to exist why Rev. D. should be repelled from the office of —; namely, that Rev. D. does not know canon law, which knowledge is required for the said office and therefore that according to the sacred canons (*lib. I, t. 6, c. 7*) he, the said Rev. D., is not eligible to the said office of ——. 2° That Rev. D. is shown guilty of having used and published injurious language against ecclesiastical and apostolic authority and therefore is unfit to be rewarded by promotion to the office of ——. Wherefore we declare that he cannot be nominated or chosen to the office of ——; and if he is chosen we pronounce that the choice will be ipso jure null. Thus and every other best way. This sentence was given, read and published this — day of — A. D. — at —. Thus we pronounced seated in our tribunal. N. Judge.

N. Actuary."

475. When church property is to be alienated the summary process may be used in establishing the necessity or evident utility for alienation. The decision or decree in the matter may then be drawn according to the forms given above in n. 324, 325.

Following is a form for a sentence or decree in a cause of nullity of religious profession:

"We, Bishop of N., considering the petition and instance of Sister N., named in the world A. B., a professed religious (or novice) in the convent of N., and dwelling in cloister with the habit, which petition concerning the nullity of her profession was legally introduced before us within five years from said profession; considering the proofs advanced for her side and the whole process formulated in the case, from which it is established that force was used, and fear sufficient to move a strong man, was induced by C. in order to force the said A. B. to take the habit of a religious and make profession in the said convent; we say and declare that the profession (or receiving the habit) made by the said A. B. was and is null, and that she is not bound to the observance of the rule of the said convent and that consequently it was and is allowed her to return to the world without violation of her vows, and to leave the cloister, and we willingly grant such leave. Given at — on &c.

[L. S.] N. Bishop of N.
N. Actuary."

If the religious community is subject immediately to the bishop he alone is the judge; but if it has its own superior, as in the case of men, then the religious superior with the bishop will give a joint sentence. (*Cf. Benedict XIV, Bull, Si datam.*)

CHAPTER XIX.

RULES FOR PUNISHMENTS.

476. A punishment in general is an evil, a pain or a suffering, whether of body or soul, inflicted for a crime. There can be no punishment when there is no crime: "Sine culpa non est aliquis puniendus." (*Rule 23 in 6°*) Ecclesiastical punishments are inflicted for crimes, not sins. By a crime in its legal or canonical sense is meant not every sin but only certain grave sins to which the law of the church has attached a punishment for the external forum. Certain punishments or remedies are called *preventive* because they aim at preventing the serious fall or repetition of a fall in those inclined to crimes. Other punishments are called *repressive* because they aim to repress crimes in one fallen and to bring him back to the right way.

477. For some crimes the law itself specifically determines the punishment, which is then called ordinary. For other crimes the law enacts that they are punishable, and therefore enacts a penal sanction, but it does not specify the punishment, leaving it to the judgment of the judge to inflict what he deems proper. The judge in punishing must always quote the law under which he inflicts punishment. Ordinary punishments are enacted either as *latæ sententiæ* which are incurred ipso facto for the internal forum when the crime is committed, or *ferendæ*

sententiæ, which require a trial and sentence by the judge. A crime to be punishable must be wilful, external, personally committed, mortal or grievous, complete, juridically proved, and designated in law as punishable.

478. The rules following may be helpful to judges: 1° Only the supreme lawgiver, the Pope, can introduce a new ecclesiastical punishment. Bishops must use those sanctioned by the canons. 2° Punishments or remedies sanctioned by the canons are of two kinds, preventive and repressive. 3° The judge should always bear in mind that the reform of the criminal is the aim of the church in punishing even by vindicatory sentences. 4° Therefore, it follows that when an ecclesiastic falls into crime, nothing as a rule should be done, if he amends and repairs his offense. But if he persists in his criminal course, as a rule he should be first warned at least twice; then if the admonitions prove of no avail he should be given the precept; if even this is not effective, he should be put on trial, and if convicted be punished *medicinally*, that is, by censures; finally, if even these fail to reform him, vindicatory punishments may follow.

479. However, 5° where the crime committed is of great enormity and it is evident that the delinquent acted with malice prepense, or also where the greatness of the scandal given requires it, the criminal trial may at once be begun by the fiscal procurator filing his complaint, without the previous admonitions or precept having been given by the bishop. On conviction, vindicatory punishment, according to the canons, may at once be inflicted on the criminal.

(*Cf.* "*Cum magnopere*," *art. 11; III Coun. Balt. n. 300.*) 6° In general it belongs to the ordinary to assess after trial what punishment he deems best adapted for the case, whether only preventive or repressive, and also the specific preventive or repressive punishment. 7° But where the law clearly states what punishment should be inflicted, the judge should not change it except for grave reason. 8° The judge should always incline to mercy rather than to severity. 9° Finally it should be remembered that when a crime or fault has once been punished even by a preventive remedy, such as a retreat, it cannot again be punished; although the crime and its punishment may be introduced as evidence in a new case. (*Regula juris 83 in 6°.*)

480. The chief preventive remedies or punishments are, spiritual exercises, the admonitions and the canonical precept. (*Cum magnopere, art. 4.*) The spiritual retreat here meant is not the common retreat made by the diocesan clergy, but a special one imposed on an ecclesiastic by the ordinary. Hence this retreat cannot be imposed except for an offense or some other action which is proximate to an offense and partakes of its nature. The offense, however, must be not occult, but external and known to others. (*Cf. Acta S. Sedis, vol. 15. pg. 377.*) The retreat should be imposed in writing, and the reason for it specified. Forms for the admonitions and the precept were given in a preceding chapter n. 331 and 332. The following form of letter may be used in imposing the retreat:

(Place and date.)

"Reverend Sir:—

Having maturely considered in itself and its cir-

cumstances the offense which you have committed, as shown by proofs in our possession, viz., (state the offense), We deem it wise and prudent to impose a preventive remedy, as in "Cum magnopere" art. 4, and We therefore instruct you to make a spiritual retreat of three (or more) days in (state place) at your own expense; and We further order that you file with us within fifteen days (state time) from the date of these letters a certificate from the superior of the said institute to the effect that you have made the said prescribed retreat. This do and may God have you in his holy keeping.

Yours faithfully in Christ,
To Rev. N. N. N. N. Bishop of N."

481. The above preventive remedies may be inflicted after a summary investigation as stated above in n. 341. If it is necessary to inflict other and *repressive* punishments, the process outlined in "Cum magnopere" art. 6, and following, must be used. It is left to the judgment of the ordinary to impose by his sentence after trial the repressive punishment he deems best adapted in the circumstances. However it must not be excessive under pain of nullity. While all repressive punishments have in view the reform of the delinquent, still they are divided in medicinal and vindicatory. The former are called censures, the chief aim of which is to curb and break the contumacy of the delinquent; the latter, or vindicatory punishments have the vindication of the law and the public good as their chief object.

482. There are three repressive medicinal punishments or censures, namely, excommunication, suspension and interdict. They are designed chiefly against obstinate persistence in crime; hence a per-

son to be liable to any of these censures should not only be guilty of crime but of persistence in it after having been duly warned. This warning which must precede the punishment can emanate either from the law itself or from the superior. Hence a person may become contumacious either when he does not heed the warning of his superior addressed to him individually or when he violates an ecclesiastical law with full knowledge of the law and of the annexed censure. Censures are either *latæ* or *ferendæ sententiæ;* the former being incurred *in foro interno* by the very fact of committing the crime, the latter being incurred only after sentence of the ordinary or superior. But in order that a sentence *latæ sententiæ* may bind in *foro externo* a declaratory sentence of the censure must be given by the superior and this must be preceded by a citation to the delinquent to show cause why the sentence declaratory of the censure should not be passed. A censure which is *ab homine* or *ferendæ sententiæ*, for validity requires previous warnings and a trial before it is inflicted.

483. Since these censures are intended to break the obstinacy or contumacy of the delinquent, they should be inflicted *indeterminately* as to time. But suspension and interdict may also be inflicted as vindicatory punishments, not as censures. In such a case they may be imposed for a set time, but in the sentence it should be stated that the suspension or interdict is a punishment, not a censure. However, excommunication can never be thus inflicted, for it is never anything but a censure aud must be indeterminate.

484. Following are some rules regarding censures: 1° It is the unanimous teaching of canonists that censures can be inflicted validly only for grave offenses. 2° A censure can never be inflicted for a venial fault. 3° Censures are always very severe punishments even if inflicted for only a few days. 4° Censures cannot be imposed, even for grave offenses, except after all other milder punishments have been applied and failed to produce any effect. (*Cf. Benedict XIV De Synodo, l. 10, c. 1, n. 2.*) 5° Censures are not to be inflicted even for the greatest crimes, unless the delinquent has openly and incontestibly shown his incorrigible and obstinate persistence in crime. (*Cf. Fessler, der Kirchenbann pg. 17; Kober, der Kirchenbann, pg. 145; Smith, Elements III, n. 2030.*) This incorrigibility is shown by the delinquent breaking the canonical precept or disregarding several admonitions, the giving and the disregarding of which precept or admonition must be judicially shown. In other words, censures cannot be inflicted until preventive remedies have been tried in vain. 6° Censures, as such, cannot be inflicted for crimes, which are entirely past; though vindicatory punishment may be imposed. 7° A bishop, by *general* mandate on a grave matter either in or out of synod, may impose a censure on any one who in the future will violate this mandate, and the censure may even be *latæ sententiae.* Further in a *particular* case by way of individual sentence it is certain that a bishop may threaten for good reasons a censure *ferendae sententiae.* But it is generally held that a bishop cannot even validly inflict by special sentence on an individual a correctional pun-

ishment or censure to be incurred *ipso facto* for future crimes. (*Cf. Cap. Romana 5, de sent. excom. in 6°; Glossa in cap. cit. v. futuris; Glossa in cap. 2 de const. in 6°, v. commiserunt; Rota, Enchir. pg. 277*) 8° Even if it is held that a bishop may inflict such a particular sentence *latae sententiae* for future crimes, the censure has no effect *in foro externo* until juridically declared by sentence after citation to the delinquent to show cause. 9° Formerly three, but to-day two or at least one peremptory warning are required before a censure may be inflicted which is *ab homine*, or *a jure* but *ferendae sententiae*. In case of censure *a jure et latae sententiae* the very law is a constant warning and none other is required. However, a citation to the delinquent to show cause why the declaratory sentence should not be passed, is an essential condition for validity. (*Cf. n. 334, above; also Smith, Elem. n. 2087; Walter, Canon Law, pg. 274; Smalzgrueber, l. 2, t. 14, n. 55; Santi, l. 5, t. 39, n. 14; Pierantonelli, Praxis, t. 6, n. 17, who is emphatic.*)

485. It may be asked whether the so-called "withdrawal of faculties" is a censure. In the first place the expression is uncanonical and not authorized by the canons; hence it appears an attempt to introduce a new punishment or censure, which can only be done by the supreme authority. The "Cum magnopere" art. 1, distinctly says that the ordinary is to use only "remedies established by the canons." (*Cf. Cap. 1, de Off. ordin.*) The canons do not mention a "withdrawal of faculties." Moreover, there is no certainty of what is meant by the expression. On consultation five different canonists gave five

different answers. Hence the expression, "withdrawal of faculties," "faculties will cease to be valid," is vague and indefinite; and therefore ineffectual. (*Cf. Suarez, de cens. disp. 3, sect. 2, n. 5; Pierantonelli, Praxis, t. 6, n. 21.*) The Apostolic Delegate, in giving sentence, nomine S. Sedis, on June 16, 1897, held: "Dubitari potest an per dictam phrasim 'withdrawal of faculties' veniat *suspensio* proprie dicta. Et cum in punitivis strictior et benignior interpretatio sit adhibenda, non suspensionem sed potius simpliciter cessationem a S. Missæ sacrificio importare videtur." Hence it surely is no censure, and violation of the prohibition does not produce the effects entailed by violating censures. Since the "withdrawal of faculties" is certainly not a censure, if it is anything, it must be a repressive punishment. Therefore it cannot be inflicted except after trial. A prudent judge will not use the expression, but will specify exactly the canonical censure or punishment he intends to inflict, because a delinquent may with impunity ignore an uncanonical punishment or an illegal censure. Further, such a "withdrawal," since it is not a suspension, has no force whatever outside the diocese of the bishop inflicting it, and a priest thus innodated may licitly say mass in the diocese of another bishop and receive and exercise jurisdiction therein without respect to such "withdrawal."

CHAPTER XX.

FORMS FOR CENSURES. EXCOMMUNICATION, SUSPENSION, INTERDICT.

486. Excommunication is the "expulsion from the external and internal membership of the church, the complete withdrawal of all graces and privileges acquired by baptism," or again it is defined "as a correctional punishment instituted by the church by which the excommunicate is separated from the communion or fellowship of the faithful." Thus if the excommunicated person is an ecclesiastic he loses also all jurisdiction and becomes entirely suspended from office and benefice. According to present law when a person has been publicly excommunicated by name or denounced by name as excommunicated, then must he be avoided by all the faithful. The publication must be made officially and publicly, e. g., by posting the placard on the church doors or by announcing it in the parish church during the time of service.

487. Excommunication is considered only a temporary state and is inflicted indeterminately, so that as soon as repentance occurs, the censure should be withdrawn. Hence excommunication while suspending does not ipso facto deprive an ecclesiastic of his office or benefice. It is disputed whether he forfeits the income of his benefice ipso facto or only

after sentence of the judge to that effect. However, the law says that persons who are suspended, excommunicated or interdicted, if they obstinately remain a year or longer in their censure and do not seek release from it, shall be deprived of their offices or benefices. (*Cap. 8, de æt. et qual.; Can. 36, c. 11, q. 3.*) This deprivation must be effected by a sentence after citation to show cause.

488. In excommunications and other censures *a jure et latæ sententiæ* the judge or superior before making a declaratory sentence at the instance of the fiscal procurator is obliged for validity to issue a citation to the delinquent to show cause why the excommunication should not be declared. (See n. 334 above.) Following is a form for such warning and citation:

"We, vicar general of the Most Rev. N., Bishop of N., do hereby require, admonish and cite N. N. within six days from the date of these letters, to appear and show cause, if he has any, why he should not be declared and denounced to have fallen into the excommunication specially reserved to the Holy See in the bull "Apostolicæ Sedis," n. 6, because of (state reason) 'impeding directly or indirectly the exercise of ecclesiastical jurisdiction;' which term of six days having elapsed, if he has given no satisfactory excuse, on the first juridical day immediately following, he shall be declared and denounced publicly excommunicated without further warning or citation. Given at — on the — day of — A. D. —.

[L. S.] N. Vicar General.
N. Actuary,"

The citation should specify the precise excommunication incurred, such as given above, or that for imposing violent hands on a cleric, which is simply

reserved to the Holy See, n. 2, or whatever other is to be denounced. The citation should be legally served, and on the person if possible; otherwise in his place of usual residence. In the United States, it may be served also by registered mail. (*Cum magnopere*, *Art. 14.*) Of course, the judge must have legal proof of the fact for which excommunication is inflicted.

489. Following is the form for the declaratory sentence of excommunication *a jure et latae sententiae*:

"Considering the report and motion of our fiscal procurator, the depositions of witnesses and the law cited and the whole process formulated in our curia against N. N. accused of impeding directly or indirectly the exercise of ecclesiastical jurisdiction in resisting the Most Rev. Bishop of N. (*or* accused of laying violent hands on the ecclesiastic X., *or* state other reason); considering the canonical warning and citation given and served on the said accused to show cause why he should not be declared to have fallen into excommunication, and nothing being alleged to excuse him; by this our declaratory sentence we say and pronounce that N. N. has fallen into major excommunication specially reserved to the Holy See, contained in the bull "Apostolicæ Sedis," and therefore we order that placards be affixed in public places against him that he may be avoided by all, and be denounced as excommunicated, as we hereby denounce him. This and every other best way. Done at — on &c.

N. Vicar General.
N. Actuary."

490. Following is a form for notice or placard to be affixed in the usual places such as on the doors of the cathedral and parish churches, in order to publish the excommunication:

"Hereby N. N. by our ordinary authority is denounced as excommunicated by major excommunication specially reserved to the Holy See, and he is separated from intercourse and communion with the faithful and deprived of participation in the sacraments and the suffrages of the church, and of christian burial in case of death; because he directly or indirectly impeded the exercise of ecclesiastical jurisdiction (or state other reason.) In order therefore that he may be shunned by all, as we hereby order him to be shunned, we have ordered these presents affixed and published; and so let it be until he shall merit absolution from the Apostolic See. Given at — on &c.

[L. S.] N. Vicar General.
N. Actuary."

491. When not only the crime but also the *contumacy* of the delinquent is surely notorious and the excommunication, or other censure, is *a jure et latae sententiae*, no citation to show cause is required before a declaratory sentence is passed and published. But this notoriety is then made evident in the decree itself.

Following is the wording of such a declaratory sentence lately issued by the Holy See itself:

DECREE OF EXCOMMUNICATION.

WHEREAS, It has been made known to the Holy See from undoubted documents that the priest, N. N., by origin a Pole, now being in the arch-diocese of Chicago, has contumaciously rebelled against legitimate ecclesiastical authority, and moreover calls himself Bishop of the Catholic Independent Diocese of Chicago, and has published a letter which he calls a pastoral, in which he says that he received episcopal consecration from certain heretical bishops

in Switzerland; our Most Holy Father, Pope Leo XIII, in an audience of the twenty-sixth day of April, 1898, ordered that in his name, by the present decree of this Sacred Congregation De Propaganda Fide, it should be declared that the pseudo-Bishop N. N. has incurred "Major Excommunication" reserved in the Roman Constitution "Apostolicæ Sedis." Moreover, His Holiness commands that this sentence of excommunication be published with proper instructions not only by the Ordinary of Chicago in his diocese, but also by each and every one of the Ordinaries in the United States of North America.

Given at Rome, from the Palace of the Sacred Congregation De Propaganda Fide, on the second day of May, 1898.

M. CARD. LEDOCHOWSKI, Prefect.
[SEAL.] A. ARCHBISHOP OF LARISSA, Secretary."

492. Following is a form for the monitions before inflicting a censure *ab homine* or *ferendae sententiae* laid down in law:

"N. Episcopus N. (*Vel*) N. vicarius generalis Revdo N. N. Moneris tu, Rev. Dne, ad dimittendam et ejiciendam in termino trium dierum, e domo tuæ solitæ habitationis mulierem N. tuam concubinam, ut nobis constat, et ab ea omnino te separàndum, et abstinendum a consuetudine cum ea fornicandi, sub pœna excommunicationis (suspensionis); et hoc primo et pro prima canonica monitone, instante promotore fiscali. Datum &c.

[L. S.] N. Episcopus (vel vicarius gen.) N.
N. Actuarius."

It is of course necessary that certainty of the fact or notoriety be had before any monition can be given. If the first warning is not heeded a second and a third should be given. "Et hoc secundo et pro secunda canonica monitione; et hoc tertio et pro

tertia canonica et ultima peremptoria monitione &c." If contumacy is shown by neglecting the peremptory warning, excommunication may be declared without further citation. Other punishments may also be inflicted on clerics, following the order laid down in Cap. 14 sess. 25, de refor. of the Council of Trent.

493. When the ordinary threatens censures by virtue of a decree of the Holy See of which he is only the executor, since there is no appeal from the decree, he may use this form for citation, after the fiscal procurator has prepared the acts and the actuary placed the decree in them:

"Let N. be cited and admonished and he is so cited and admonished to make answer on the first day against the rescript or decree of the S. Cong. de Propaganda, emanating from the cause of N. and found in authentic form in the acts, which answer is ordered for the first day after the date of this; and on the second day immediately following the date of this he is cited to show cause why he should not be excommunicated; and on the third day likewise immediately following the date of this, he is cited to see himself excommunicated, declared excommunicated and so denounced, without further citation or warning. Given &c.

[L.. S.] N. Bishop of N.
N. Actuary."

494. When a person has remained under censure for a year without signs of repentance he may be cited as suspected of heresy and insordescent in censure. Following is a form:

"Let N. be cited and warned and he is hereby cited to appear and answer concerning his faith and to purge himself of the suspicion of heresy within the peremptory term of —— days; otherwise, this

term having elapsed, he is cited to see himself declared insordescent in censures and to be again excommunicated. Given &c."

In a similar way a person insordescent in censure may be deprived of his benefice, after warning.

495. Suspension is a "censure by which an ecclesiastic who is guilty of crime is temporarily deprived in whole or in part of the use or power which he possesses, either by reason of his order, or of his office or of his benefice or income." Suspension may be from office only or from office and benefice. The later is a total suspension. But when it is from either or from some act pertaining to either, it is called partial. Thus suspension may be *ab ordine* and still a priest retains jurisdiction. Again it may be from one or another act of order or of jurisdiction. Hence in passing sentence or declaring the censure, the judge must be careful to specify the extent of the suspension. Suspension from benefice deprives the incumbent only of the fruits and the administration of the benefice, but not of the title to it. An administrator must in such case be appointed.

496. For inflicting suspension as a censure, the admonition and the precept, or two canonical warnings, and in either case the trial, are required; but when it is inflicted as a vindicative punishment only the trial need proceed. If the suspension is laid down in the law and incurred ipso facto, a citation to show cause why it should not be published is all that is required before the declaratory sentence. One exception is made for *occult* crimes by the council of Trent, which allows bishops, not their vicars general, to suspend clerics from office, not from benefice, by the extraor-

dinary procedure called *ex informata conscientia*, without any admonition or trial preceding. A priest thus suspended from the cure of souls retains possession of his parish, but must supply a reasonable support for a vicar, to be in this case appointed by the bishop. No appeal lies against a suspension *ex informata conscientia*, but only a recourse to the Holy See or with us also to the Apostolic Delegation.

497. Following is a form for suspension *ex informata conscientia*.

"It being known to Us that Rev. N., a priest, is guilty of crime, for reasons which rightly determine Us and for which we are ready to give an account to God and the Holy See when required, by virtue of the faculty granted by the S. Council of Trent, sess. 14, c. 1, de ref. and *ex informata conscientia*, We suspend *a divinis* for six months the said priest, Rev. N., and declare him suspended and order the decree of suspension served on him. Given &c.

[L. S.] N. Bishop of N.
N. Actuary."

498. Following is a form for declaring a suspension incurred ipso facto in "Apostolicæ Sedis," n. 2, after a citation to the delinquent to show cause why declaratory sentence should not be passed. In this case the bishop has jurisdiction also over regulars:

"Considering the recourse of Rev. N., rector of N—, and the report of our fiscal procurator, and information being had from which it is certain that Rev. X. assisted at and blessed the marriage of N. and N. who are parishioners of N., and considering that Rev. X. did this without any permission of Rev. N., the pastor of N. and N.; considering further that the Rev. X. being cited and warned to

show cause why he should not be declared suspended did not produce anything to relieve him, We say and declare that the said Rev. X. according to sess. 25, c. 14 de ref. of the council of Trent, is suspended and We wish and declare him suspended and order his suspension published by affixing a decree to the doors of the parish church. This and every other best way. Given &c.

[L. S.] N. Bishop (or) Vicar General of N.

N. Actuary."

499. Following is a form for declaring a suspension which is laid down in law but is *ferendæ sententiæ*, and is found in Cap. Episcopus 35 distinctio. A similar form may be used for others of the same kind:

"Considering the instance of the fiscal procurator and the information taken on both sides, from which it is certain that N. N., a priest who is accustomed to play at cards, has not obeyed the admonition and precept given him to abstain from such play under pain of suspension; considering that he is given to such play even with laics and also in public houses, we hereby in virtue of Cap. Episcopus 35 Dist. suspend him *a divinis* for three months and declare and denounce him suspended therefrom and order the suspension served upon him. Given &c.

[L. S.] N. Vicar General.

N. Actuary."

The above form is practically a definitive sentence after trial, and is sufficient, though less formal than the forms given in n. 420-432. Being a definitive sentence the usual formalities are required in giving it.

500. A bishop for a reasonable cause, which is to be manifested to the Holy See when it requires it,

can suspend regulars from hearing confessions, even after he has approved them. No trial of any kind is required. Following is a form under the Const. of Clement X, *Superna:*

"Considering that Fr. X. of the order of N. and the convent of Y. does not observe the conditions and monitions prescribed and enjoined on him in the approbation given him by us to hear confessions, and for other reasons known to us and determining our judgment, we hereby revoke the aforesaid faculty and suspend him from hearing confessions, and declare him suspended therefrom and order the suspension served upon him. Given this &c.

[L. S.] N. Bishop of N.
N. Actuary."

501. While a judge in inflicting censures is obliged to follow the prescribed form of "Cum magnopere" and after canonical warning put the censure in writing with a statement of the reason, still this holds only when the judge suspends from some act which belongs to the suspended person in his own right. But when the judge suspends from an act which comes to the suspended person only from the commission of the judge himself, then the judge neither sins nor incurs the penalty if he omits these solemnities. Thus a simple priest who has not the care of souls and who cannot hear confessions *jure suo*, can be suspended from that act without warning and without writing; because such a suspension or withdrawal is really no suspension and no censure, but an inhibition and a revocation of the concession formerly given. Wherefore as the bishop could commission him verbally so he can verbally revoke the commission. But on the other hand, if a bishop or judge

should suspend from hearing confessions a parish priest or one having charge of souls, without putting it in writing and stating the cause, he would sin grievously and fall under the punishment decreed in *c. medicinalis de sent. excom. in 6°*, i. e. he would be obliged to pay all expenses and interest thereon to the censured person and suffer other punishment, because in this case the hearing confessions belongs *jure suo* to the priest having charge of souls, even if he is only a vicar. The same can be said of saying mass, which *jure suo* belongs to a priest having charge of souls, and cannot be withdrawn by the bishop, except with the formalties required by the "Cum magnopere" for the infliction of censures or punishment. (*Cf. Sayr. de cens. l. 4, c. 2, n. 18; Monacelli, p. 3, t. 2, f. 11, n. 9.*)

For this reason, also, the so-called "withdrawal of faculties" cannot be understood as a canonical term when there is question of priests who have charge of souls, even as vicars. When once appointed their right to say mass depends on their position, not on the mere will of the bishop, and this right can be limited only by censure or punishment canonically inflicted. Moreover, since the expression "withdrawal of faculties" is uncanonical, vague and ineffectual, it seems that a priest having charge of souls who is inflicted by such a term, may ignore it with impunity. There are canonical terms which the judge can use easily and effectively.

502. An interdict is a correctional punishment by which in punishment of crime the public celebration of divine service, the administration of certain sacraments and ecclesiastical burial are forbidden in cer-

tain places and to certain persons. Interdicts in the comprehensive sense of former times have gone out of use. Interdicts are local and personal. They are inflicted only for grave crime, in which the whole community or a majority of it is implicated. The usual formalities required for censures are necessary in inflicting an interdict.

503. Following is a form for declaring an interdict:

"Considering the report of the excess of B., a publicly excommunicated person and information being had from which it is certain that he was publicly present at divine service in the church of X. on the feast of —— and was admitted to the Holy Eucharist; we hereby subject to ecclesiastical interdict the aforesaid church and the priests N. and N. who temerariously received and admitted him, and we wish and declare them subject to interdict and order that they be publicly denounced. Omni meliori modo. Given &c.

[L. S.] N. Bishop of N., (or) Vicar General.
N. Actuary."

504. The interdict may be thus published:

"By our ordinary authority the church of X. is declared and announced to be under ecclesiastical interdict, and N. and N., officials of the same church are declared subject to the same interdict from entering the church, for the reason that they temerariously dared to receive and admit to the divine offices and participation in the sacraments on the last feast day of —— B. who is publicly and notoriously excommunicated. Given &c.

[L. S.] N. Bishop of N., (or) Vicar General.
N. Actuary."

CHAPTER XXI.

APPEAL AND RELEASE FROM CENSURES.

505. It is allowed to appeal against all censures, no less than against other punishments. As a rule appeals from *vindicatory* punishments produce a suspensive effect, for the decree of execution is estopped. But since a censure executes itself, when it has already been inflicted, ordinarily an appeal produces only a devolutive effect. However, if the censure has also temporal as well as spiritual effects, the common teaching of canonists is that an appeal has also a suspensive effect. Thus from a suspension *a beneficio* a suspensive appeal may be taken. (*Cf. Smalzgrueber, l. 2, t. 28, n. 24; Bouix, de Jud. II. p. 255; Stremler, pg. 255; Cap. 20 de sent. exc. in 6°; Glossa ibidem.*)

506. A suspension, which is a vindicatory punishment, not merely a censure, can be appealed against in suspensivo like any other punishment. (*St. Ligouri, l. 7, n. 314; Kober, Suspension, pg. 83 et alii.*) An appeal even against a purely spiritual censure has a suspensive effect, if the cause assigned is nullity. (*Ad militantis n. 36.*) An appeal against the declaration, made or even threatened, of a censure *a jure et latæ sententiæ* has a suspensive effect. An appeal made against the proposed publication of a censure *ab homine* is held to-day to have a suspensive effect. (*Cf. Smith Elem. n. 3040-3045.*) An

appeal against a *threatened* censure has surely a suspensive effect, and if the judge nevertheless declares the censure, it may be ignored with impunity. This holds true even if the higher judge after seeing the acts rejects the appeal. (*Pierantonelli, Praxis, t. 6, n. 19; Smith Elem, n. 3050. et alii communiter.*) After the appeal has been rejected by the higher court, the threat should be renewed by the lower judge in order to be effective. (*Communis DD.*)

507. When an appeal is made to the metropolitan against a censure, he thereby obtains jurisdiction to re-examine the whole case, and to confirm or revoke the censures inflicted. Meanwhile the sentence cannot be executed by the judge *a quo*, and the metropolitan may after warning inflict censures on the vicar general of a suffragan who in such circumstances attempts to execute the sentence. The appeal may come either on the plea of unjustness or on that of invalidity in the censure.

If the reason alleged is *injustice*, then the metropolitan must first see the acts of the lower court and hear the parties, before he relaxes the censure. The procedure in the metropolitan court on appeal is the "Cum magnopere" as in the lower court. If the metropolitan finds the censure unjust he himself will at once revoke it and declare it invalid. If he finds it just he will send the appellant back to the lower court for absolution, and if the suffragan bishop refuses to absolve from the censure when requested by appellant, then the metropolitan will absolve. In case the metropolitan finds it doubtful whether the censure is just or not, he himself may grant absolution, but to-day it is the rule to send the

appellant back to the lower court with a mandate that he be absolved within a brief time stated in the mandate. When a censure has been unjustly inflicted, the metropolitan is obliged to order the lower judge to completely indemnify the appellant, unless the judge can show he acted from error depending on some one else, but not from ignorance. The presumption is always against the judge in such cases.

508. When the reason alleged in the appeal is *invalidity*, the invalidity is either certain or doubtful. If certain, and notoriously invalid, then no appeal need be taken. Still with us it is safer to have the invalidity declared by the higher court on appeal ex capite nullitatis. Meantime the censure need not be recognized in either forum. But if the invalidity is doubtful the metropolitan when an appeal is made, should first of all examine the acts in a *summary* way and having cited the lower judge, should before he hears the case on its merits grant absolution from the censure *ad cautelam*. He then hears the case on its merits, according to "Cum magnopere" and in his definitive sentence either sustains the censure and then it ipso facto revives, or he reverses the lower court and the absolution from the censure becomes absolute.

509. The absolution *ad cautelam*, when the appeal is because of invalidity, must always be ordered immediately by the metropolitan, except the judge *a quo* offers to show within eight days that the censure was justly imposed for a *notorious* crime or for *notorious* contumacy. Then the metropolitan may wait eight days. But if the judge *a quo* does not prove his assertion, the absolutiou is to be given *ad*

cautelam. The bishop *a quo* is also obliged to show that he properly cited the alleged contumacious person, not only peremptorily to the trial, but also by a *second* warning or citation to show cause before the censure was inflicted or declared. (*Cf. Pierantonelli, Praxis, t. 6, n. 17-19; also n. 334 above.*) If the judge *a quo* makes the required showing, then before absolution *ad cautelam* is given, the metropolitan must require from the appellant that he make due satisfaction to the lower court, that, if he be contumacious, he pay the costs of the lower court, that in token of submission he present himself to his superior by whom he was censured, that he sincerely promise to obey the laws of the church for the future. After this is done, the metropolitan will send him for the absolution *ad cautelam* to the judge *a quo* with an order that the absolution be given within three days. If the judge *a quo* refuses, the metropolitan will give it himself. Then the merits of the case are considered in regular form. Even when the invalidity is doubtful, if the appeal was taken for that reason, the appellant need not observe the censure in either forum.

510. An appeal from a threatened censure has a suspensive effect. The same is the case if the judge *a quo* who threatened censure was challenged before he inflicted censure. In these cases the metropolitan will decide only after a full re-hearing on the merits of the case.

A censure is invalid when one essential formality has been omitted in inflicting it. It is unjust if there is no cause or not sufficient cause for the censure in question. It is both valid and just when inflicted

for sufficient cause and with all the required formalities. When a censure has been validly inflicted, even if unjust, it must be observed *in foro externo*, though if certainly unjust it may be disregarded *in foro interno*. A censure is invalid, if the superior exceeds his jurisdiction, if he himself is under censure, if the defendant has appealed before the censure was actually inflicted, if the superior imposes a censure on one not his subject. Again it is *ipso jure* invalid if an essential formality has been neglected, if the judge neglects the two or at least one peremptory monition, if he does not give the accused a trial, if in the trial he leaves out some essential formality, such as the citation of the accused to defend himself. Finally the censure is *ipso jure* invalid if inflicted without a sufficient cause or crime *juridically* established. Hence no censure can be inflicted on mere private information, nor even on the information obtained in the summary investigation before preventive remedies, because that information is not yet juridical, since the accused has not been cited nor heard.

511. However, after the informative process of a judicial trial has been completed and a legal proof of guilt has been obtained, the judge, either just before or after the citation is given the accused, may *sometimes* order him to retire *provisionally* into a monastery or other suitable place during the time the trial goes on. This is equivalent to incarceration, and is considered a very severe punishment, and indeed an irreparable damage. Therefore it cannot be inflicted by the auditor or judge except where there are already on hand legal proofs of guilt obtained *judi-*

cially, not extrajudicially, and when also the crime in question is very grave, atrocious and causing great scandal, so that the accused cannot continue to exercise the sacred ministry *publicly* and in the midst of those among whom his offense is known without grave scandal and injury to religion. A judge who orders incarceration without these circumstances renders himself liable for heavy damages. Such incarceration does not necessarily entail suspension. (*Cf. Pellegrinus, part 4, sec. 8, n. 14-19.*)

512. The wilful violation of a valid and just censure is a mortal sin and entails irregularity, which is a disqualification to receive orders or to perform the functions of orders already received. Irregularity ensues only for violation of suspension from order, *ab ordine*. It is incurred ipso facto and is reserved to the Pope. It is not incurred for violating an invalid censure, nor one *notoriously* unjust, which really is equivalent to an invalid one. Besides irregularity, privation and even deposition from all offices and benefices may be inflicted after canonical warnings on those who obstinately disregard correctional punishments or censures, when the suspension is *ab ordine* and acts of ordo are performed. If acts of jurisdiction are performed during a suspension from them, the acts are null and void, and other punishments may be imposed after monition as the judgment of the superior determines.

513. In order that a censure may cease, a formal remission or absolution by the ecclesiastical superior is necessary. As soon as the delinquent has amended he has the right to absolution and the judge is bound to grant it from censures—not from vindic-

atory punishment. If the superior by whom a punishment was imposed for a certain time sees fit to shorten it, he may do so. Even vindicatory punishments may be remitted, unless scandal is too great. (*Cf. Kober, Suspension, p. 128; Droste-Messmer, pg. 112; Sanguineti, Inst. pg. 400, 459: Shulte, 2, pg. 387.*) When censures are incurred *a jure et ipso facto*, and not reserved, every confessor may absolve from them also *in foro externo*. When these censures are reserved, then only the lawgiver, his successor or his delegate can absolve. When, however, censures are *ab homine* through a special sentence, which applies also to censures *a jure ferendæ sententiæ*, then only the superior who inflicted them, his successor or delegate, or his higher superior and no one else can remit them. Such censures follow the delinquent even out of his diocese.

514. A person under censure may be released absolutely, which is usually the case. Again absolution from censures is frequently given *ad cautelam* in the exercise of voluntary jurisdiction, as in the sacrament of penance, in granting dispensations, before conferring offices or benefices. It is also given *ad cautelam* in contentious matters, when it is doubtful whether or not a censure is valid, or again in order to give a witness or litigant standing in court for a certain case. Sometimes, as in danger of death, absolution is granted under the condition of re-incidence, or revival of it. Before absolution is granted from censures, the person under censure must ask personally to have it removed and should, if required, give satisfaction to the injured party and repair the scandal given if it be possible. Be-

fore absolving, the superior should obtain sure information that the delinquent has really receded from his obstinacy. Whenever the censure has been officially published the absolution must be given in *foro externo*, the formula of the Roman Ritual (*Tit. de Sac. Pœn.*) being used from propriety, but not from necessity for validity. Forms for absolution were given in n. 367 above.

515. The forms for presenting an appeal to the metropolitan court and for recording it are given in n. 448-453 above. The following form may also be used by the appellant:

"To the Metropolitan Curia of N.

Comes now the undersigned appellant before the Most Reverend Metropolitan and shows that he is a priest of the diocese of N., which is suffragan to this metropolitan curia; that on the — day of — A. D. —, he was grievously injured by a sentence passed upon him by the V. Rev. Vicar general of N. —; that, therefore, using his right, he appealed and does appeal to this metropolitan curia for relief from the said censure which is of the following tenor: (give censure exactly in full.) And the said appellant says and shows that this aforementioned censure is *invalid* because 1° no canonical warning was given him previous to the infliction of the censure, 2° no trial preceded the censure. Wherefore, the said appellant, your orator, asks the aid of this metropolitan curia and an inhibition to the V. Rev. Vicar general of N. —, prohibiting him from proceeding further in the matter of this said censure, and he asks the further aid of this metropolitan curia for the revocation of the said invalid censure, and the final adjudication of the whole cause therewith connected. Further your orator, this appellant, asks that he be given his entire costs and interest, as by law re-

quired, for this most grievous damage thus illegally and unwarrantedly inflicted and sustained. This and every other best way, by law, custom or statute your orator will ever pray. Dated &c.

Signed: N. N. Appellant."

516. Following is a form for remitting the appellant to the judge *a quo* with a mandate for absolution *ad cautelam* from the censure:

"We, vicar general of the archdiocese of X. and judge of appeals from the diocese of N.; considering the appeal of Rev. N. of the diocese of N., against a censure inflicted on him by the V. Rev. Vicar general of N. and dated ——; considering the plea of invalidity made by said appellant; having seen the acts and the opposing party being cited, in accordance with the constitution "Ad militantis," n. 37, we hereby remit the said appellant, Rev. N., to the aforesaid V. Rev. Vicar general, or ordinary of N. in order that within three days the said ordinary of N. may grant the said Rev. N. absolution *ad cautelam* from the said censure; and we so have ordered in this and every other best way. Given &c.

N. Vicar General of the Arch-diocese of X.

[L. S.] N. Actuary."

517. Should the vicar general of a suffragan bishop, in spite of inhibitions, proceed to execute a censure, or other sentence from which an appeal has been taken, the metropolitan may punish him even by excommunication after proper warning and citation. (*Cf. cap. 1, de off. vicar. in 6°.*) This is also true, even for the first instance, when the vicar general is guilty of faults in his official capacity. (*S. C. Conc. 25 Feb. 1642.*) The complaint may be made either by the fiscal procurator or by any subject of the suffragan bishop. In such cases the arch-

bishop himself should sign the acts of the process, not his vicar general, in order that there may be no question of nullity in the process. If the offending vicar general appears personally or by procurator and gives reasons why he should not be punished he should be heard. If he pleads guilty but begs pardon and promises to act rightly for the future, when satisfaction is made to the offending party, and his *written* promise is filed in the metropolitan chancery he should be pardoned provided he is not a recidivus. (*Cf. Monacelli, p. 3, t. 1, f. 32, n. 7.*)

518. The following form may be used for citing the delinquent vicar general. The service of the citation must be proved as usual:

"Let the vicar general of N., the V. Rev. N. N. be cited and admonished, through a messenger (also registered letter 'Cum magn.' art. 14) personally if he can be found, otherwise by a copy left at his place of usual residence or affixed to the door of the cathedral of N., and he is hereby cited and admonished, to appear before Us within the (peremptory) term of —— days to show cause and make answer why he should not be punished by excommunication as in cap. 1, de off. vicar. in 6°, because of his action in attempting to execute a censure (or sentence) imposed on Rev. N. N. after the said Rev. N. N. had appealed and the said V. Rev. Vicar general had been inhibited from proceeding further. Given &c.

[L. S.] N. Archbishop of N.

N. Actuary."

519. Following is a form for the decree to be issued by the archbishop after the usual (see n. 334) warnings have been given to the delinquent vicar general:

"Considering the acts and proofs brought before

Us, from which it is certain that the appeal which N. interposed before our tribunal within the proper time from a judicial decree (or a sentence having the force of a definitive) passed by the V. Rev. N. vicar general of the Bishop of N., our suffragan, in a cause tried between the appellant on one side and X. on the other (or state cause), which appeal was rejected by the said V. Rev. Vicar general; considering the execution of the aforesaid decree (or sentence) notwithstanding our inhibition; considering the warnings given and executed with the peremptory term assigned to the said vicar general to appear and show cause under pain of excommunication; considering his contumacy; We say and declare that the said vicar general, N. N., has been grievously derelict in office and in the exercise of jurisdiction, and has offended against archiepiscopal and metropolitan jurisdiction; and therefore he should be excommunicated, as We now excommunicate and declare him excommunicated. Further We wish and order that he be publicly denounced as such by affixing placards both in this our city and in the city of N., with the clause that those who remove, tear or deface these placards shall, even if they be regulars, incur ipso facto excommunication. Given at &c.

[L. S.] N. Archbishop of N.

N. Actuary."

520. Following is a form for publishing such an excommunication:

"By these presents with our ordinary authority, N. N. the vicar general and official of the Most Rev. Bishop of N., our suffragan, is denounced and declared excommunicated by excommunication reserved to Us; because he would not admit an appeal made to Us within proper time from his appealable decree (or sentence,) and notwithstanding our inhibition, nevertheless with damnable presumption proceeded further in the case. In order therefore that he may

be shunned by all We have ordered these presents to be affixed in public places in the city, and he will remain excommunicated until he shall have fully satisfied our jurisdiction and the aggrieved party, and shall merit to be absolved by Us. But all those who shall tear or deface these placards, even if they be regulars, shall incur ipso facto excommunication.

Given &c. N. Archbishop of N.

[L. S.] N. Actuary."

521. In criminal matters an archbishop to-day has no ordinary jurisdiction over his suffragan bishops. But he still retains jurisdiction in civil matters when the subject of a suffragan sues his bishop. If the bishop brings suit against his own subject, *arbitri juris* are to be appointed, for the archbishop has not immediate jurisdiction in the first instance over the subjects of his suffragans, and therefore he cannot cite such a subject. The bishop cannot act for he is a party to the suit. Hence the *arbitri juris*. But since the metropolitan has immediate jurisdiction in the first instance over his suffragans, the subject of a bishop may file his bill of complaint in the metropolitan curia, and the archbishop may act as ordinary judge. However, no citation, according to the council of Trent, should be directed to the bishop himself, but it must be issued to the bishop's procurator.

522. That an archbishop has such jurisdiction in the first instance, according to Monacelli, has been several times decided by the S. Cong. of the Council, and therefore is the law also since the council of Trent. Decisions were made in 1585 and Nov. 10, 1618, and the point decided distinctly in a Lima case Feb. 1586. (Cf. Pallotini Collection.)

Following are some canonists who clearly maintain such jurisdiction. Monacelli, T. 2, t. 15, f. 2, n. 11; Nicolinus, Lucubr. Can. l. 2, t. 2, de for. comp. 2; Zecchius, de rep. eccl. tit. de stat. Patr. et Arch; Ricc. in praxi, par. 4, resol. 496; Genuen. in praxi, cap. 86, n. 1; Passer. in cap. rom. n. 4; Pirhing, Jus Can. l. 1, t. 31, n. 14; Piasc. prax. par. 2, cap. 5, art. 2; Caput 1, distinct 80 of Corpus Juris; cap. Metrop. 45, 2, q. 7; Glossa in cap. pastoralis de off. ord. et in cap. pervenit 39, verb. interponere 11, q. 1; Abbas, in cap. de app.; DeAngelis, l. 1, t. 31, n. 17; Reiffenstuel, l. 1, t. 31, n. 38; Engel, de maj. et obed. n. 21; Maschat, tit. 31, n. 9; Gallemart, cap. 5; Santi, tit. 31, n. 153.

The II Council of Baltimore, (n. 81) gives room for the same doctrine when it uses the word "fere" in specifying some points of metropolitan jurisdiction. It not only did not exclude such jurisdiction but by using the word "fere" left room to include it and whatever else the common law and teaching includes. But it is also true that on Jan. 20, 1891, the S. Cong. of Propaganda to whom the question was referred on appeal replied: "Considering the peculiar circumstances, since it is controverted among canonists, this S. Cong. does not wish to decide the question by its sentence, and therefore calls the whole case to itself." Hence practically the best way is to bring such suit through the Propaganda direct or begin it in the Apostolic Delegation.

CHAPTER XXII.

VINDICATORY PUNISHMENTS: FINES, BANISHMENT, IMPRISONMENT, TRANSFER, DISMISSAL, LOSS OF TITLE, DEPOSITION, DEGRADATION.

523. Vindicatory punishment is intended to correct the delinquent, but also to atone for crimes and deter others from committing them. Vindicatory punishment can be inflicted only after trial, and must be proportionate to the offense. Regularly an inferior judge can neither increase nor diminish the punishment laid down in law. Still for just cause he may do either. The punishment may be increased on account of the position of the delinquent and the greater scandal, or on account of the dignity of the person offended. Again if the reason for offending was weak and the deliberation great, or if the offense has become habitual, or if the circumstances are more atrocious, the punishment may be increased. On the other hand the punishment may be lessened if the delinquent believes he is not sinning, if he commits the crime in anger or in drunkenness. Again children and the aged are to be punished less than others. Moreover, the eminence or nobility of a person is a reason of law why less severe punishment is exacted. So also is the length of time which has elapsed since the crime was committed. When

the law or statute leaves the punishment arbitrary, the judge must keep a proportion between the crime and the punishment, which may be determined by comparing the punishment inflicted by law for other crimes of a somewhat similar nature.

524. A pecuniary fine is the payment of a sum of money imposed by the ecclesiastical judge *in foro externo* upon a person in punishment of a crime committed by him. It is certain that fines are a canonical punishment. (*Cf. Council of Trent, sess. 25, c. 3, de ref.*) Hence fines may be imposed as punishments by the sentence of an ecclesiastical judge after trial, when the law expressly specifies this punishment, when it was made the sanction for synodal statutes, or when the assessing of punishment is left to the judge. Fines rather than censures should be inflicted for contumacy, (*Coun. Trent, l. c.*) and whenever the offense is not so great as to deserve spiritual punishments, such as suspension, removal and the like.

525. But in order to cut off all abuse in the collecting of fines, the same council enacted that neither the bishop nor his vicar general should either receive or appropriate these fines to his own use. Neither can these fines be used to pay the salary of the bishop, vicar general, chancellor or any official, (except the defensor of the marriage bond, according to Benedict XIV, "Dei miser," n. 12); nor can they be applied to repairing church buildings; but they must go entirely for pious and charitable purposes, such as maintaining the poor, or supporting asylums in the diocese. An excellent use would be the necessary support of clergymen under censure or de-

prived of their parishes; for these ecclesiastics are undoubtedly entitled to what is necessary for their maintenance, though not to a strict competency.

526. The bishop cannot act as treasurer of the moneys collected as punishments; neither can the vicar general, econome or other official of the bishop's house. A special treasurer, according to numerous decrees, must be appointed. He should be a member of the cathedral chapter and must give security for the faithful performance of his duties. The bishop will designate the pious works for which the money thus received is to be expended; and each year the treasurer will render an account before the ordinary and two members of the chapter, one to be chosen by the bishop, the other by the chapter. (*S. C. Ep. 20 Nov. 1654.*) The treasurer for fines is really to act as treasurer, and the ordinary cannot hold the money. (*Cf. Ferraris, Bibliotheca, Pœna, art. 1, n. 51, 73.*) He may very properly be the treasurer of the fund for infirm priests.

527. Following is a form for appointing the treasurer of fines:

"N. Bishop of N—. To &c. Following the decrees of the holy council of Trent and the Sacred Congregations, and wishing to obey them, in order that the fines and pecuniary punishments which may be imposed in our tribunal for crimes and satisfaction for them, may rightly be applied to pious uses or places in our city or diocese according to our judgment; We by these presents constitute and depute you, in whose fidelity and probity We have confidence, as the treasurer of the said fines and punishments. You will give security, to be filed in our chancery, for the faithful administration of your

office and will keep a book showing the amounts received and will expend said moneys only on our order given expressly in writing, or in our absence, on the order of our vicar general, to the bottom of which order you will have placed the receipt of the person to whom the specified amount is paid; and of your administration you will give an account each year before Us and two members of the chapter. Further We order our chancellor and econome to have nothing to do with these said funds or fines; which must be entirely deposited with you. These letters are to be registered in the chancery and to continue in force during our good pleasure. Given at — this — day of — A. D. —.

[L. S.] N. Bishop of N.
N. Chancellor."

528. Imprisonment is a canonical punishment for grave crimes proved by trial. To-day, especially in the United States, this imprisonment is modified to confinement in a house of penance. (*Cf. Stremler, pg. 63: III Coun. Balt. n. 77.*) If this house of penance to which the delinquent is condemed for a certain time is outside the diocese, a mild form of exile is usually connected with the imprisonment and specified in the sentence. Exile from the diocese is a canonical punishment for grave crimes and inflicted usually to break up scandal and take the delinquent out of the occasion of crime. For this purpose also a delinquent may be ordered to keep out of certain places or out of a city within the diocese.

529. In harmony with the reason underlying partial exile, not unfrequently a penal transfer is inflicted on a movable rector after trial. Whenever punishment is intended or can be interpreted from the circumstances, then a movable rector is entitled

to a trial before he is bound by such transfer, and pending the trial in the diocesan curia he retains possession; although pending the decision of the higher court to which he made recourse, because not given a trial, he must vacate the position from which he was decreed transferred. Still, pending the decision of the higher court he is not strictly *obliged* to accept the new charge, though he may do so without forfeiting any rights. (*Cf. n. 92, 106, above; Inst. S. Cong. Prop. circa. decr. c. Prov. Balt. I, ap. Conc. Balt, pg. 64.*)

530. There are two kinds of transfer, one penal, the other administrative. Penal transfer always requires a previous trial. An administrative transfer of a movable rector may be made for *necessity* or *utiltity*, which does not involve crime. Some grave reason is required by law, and therefore the law also implicitly requires that this grave reason be shown on recourse, and the mere assertion of the superior has no weight. (*Cf. Leurenius, For. Ben. p. 3, q. 855; DeAngelis, l. 1, t. 7, n. 2.*) Neither can indiscreet conduct, which has once been punished, be again alleged as a grave reason; for this would make it a penal transfer, and further no one can be punished twice for the same offense. (Rule 83 in 6°.) Moreover the transfer must necessarily be made to a better or at least to an equivalent parish. (*C. 1 et 4 de transl. 1, 7.*) If made to an inferior parish, even if necessity or utility is pleaded and shown, the higher court will order re-instatement. This is especially the case if an extrajudicial *cognitio causæ* has not been prepared by the bishop in advance of the transfer; for then the presumption is that the

transfer was made from ill-will and malice. (*Can. 7, 8, dist. 74.*) The above teaching was clearly sustained in a Detroit case of transfer, decided Aug. 15, 1896, by the Apostolic Delegate who on recourse decided "the transfer is not sustained" and ordered re-instatement. A form for letters of administrative transfer is given in n. 111 above.

531. It is certain that an irremovable rector cannot be transferred against his will except for canonical cause and after trial under "Cum magnopere." The rectorship undoubtedly is his parish and a transfer from his rectorship is a deprivation of it, no matter what is offered in exchange. The Third Council of Baltimore, n. 38, says an irremovable rector cannot be removed except for canonical cause, and it specified eight new causes which thereby it made canonical for this purpose. Most urgent and grave reasons of necessity and utility are alleged by a few canonists to give the bishop a right to transfer an irremovable rector against his will, but even they say that the necessity must be imperative, that it must be established beyond a doubt, that the incumbent should be induced to resign, that it must clearly be shown that the church to which he is transferred is really better both in honor and income, that this transfer should not be made except where it is impossible to otherwise provide, as by an assistant. From these conditions it will be seen that even these canonists practically deny the right of the bishop. It is certain that neither the honor nor the privileges of an irremovable rector will be maintained, unless he is transferred to another irremovable rectorship. In such a case he likely would consent.

532. Whenever the law enacts the penalty of dismissal from a benefice for crime, it thereby *a fortiori* gives the judge power to transfer the incumbent within the diocese as a punishment, if some mitigating circumstance renders such a sentence advisable. It may be asked, can a bishop in such circumstances transfer a priest, ordained *titulo missionis* since Nov. 30, 1885, to the diocese of another bishop in the same province with the consent of such bishop, but without the consent of the priest, i. e. the priest being unwilling? The reason advanced in favor of such a proposition is the fact that in answer to a request of the Fathers of the Third Plenary Council the Holy See issued a decree of which the following is a copy:

DECRETUM.

De Ordinatis Titulo Missionis.

R. P. D. Archiepiscopus Baltimorensis suo ac Episcoporum Statuum Fœderatorum Americæ nomine ab Apostolica Sede petiit, ut juramentum quod ordinati titulo missionis præstant, eos exinde obliget non pro aliqua Diœcesi tantum, sed pro tota Provincia ecclesiastica, ita ut presbyteri sic ordinati sola collatione novi tituli in aliam diœcesim ejusdem Provinciæ transferri possint de consensu utriusque Ordinarii, quin necessarium sit ut ipsi novum juramentum emittant. Insuper expostulavit quoad præteritum, ut ordinati titulo missionis pro aliqua Diœcesi ad aliam Diœcesim intra eandem Provinciam transferri possint novo titulo novoque præstito juramento absque recursu ad Apostolicam Sedem. Cum autem supplices hujusmodi preces in audientia diei 22 Novembris, 1885, Sanctissimo D. N. Leoni XIII a R. P. D. Dominico Jacobini, Archiepiscopo Tyrensi, S. Congregationis de Propaganda Fide Secretario

relatæ sint, Sanctitas Sua eas benigne excipere, ac expetita privilegia concedere dignata est, et super his præsens decretum expediri mandavit.

Datum Romæ, ex Aedibus S. Congregationis de Propaganda Fide, die 30 Novembris, 1885.

JOANNES *Card.* SIMEONI, *Præfectus.*
D. *Archiep.* TYRENS., *Secr.*

533. Now it is a well known fact that the Holy See often grants less, but never more, than is asked. The bishops in making their request made no mention, in fact had no thought, so I am informed, of transferring a priest against his will from one diocese to another within the province. They simply wished to do away with the necessity of asking the consent of the Holy See for every case when a priest wished a change of diocese and the two interested bishops consented. Moreover in some dioceses where priests are numerous it was and is a practice to loan them with their consent to neighboring bishops who need them. This practice is mentioned in n. 69 of the decrees of the Third Council. But with the oath as formerly taken to labor *in hac diœcesi* these priests could not lawfully work even temporarily, i. e., for several years, in the neighboring diocese. Bishops and priests became scrupulous about the oath. Hence the petition to the Holy See, which granted the request by a decree. A favor granted to the bishops and priests cannot well be turned to the disadvantage of the latter, unless special mention is made of such intention. (*Rule 5, t. 40, l. 5, de verb. sign. Reiffenstuel.*) Moreover, such an interpretation of the decree as would sanction a penal transfer of a priest from his original diocese

to another, would change radically the laws of the church regarding rights in a diocese and diocesan rights, which cannot be done by implication, but only by direct legislation. Even when an ecclesiastic in a church court is condemned to exile, he still has an inherent right to be considered a member of the diocese. But exile is a greater punishment than transfer; hence *a fortiori*. Moreover *in punitivis mitior et benignior interpretatio est adhibenda*, which surely is against such penal transfer. If it is claimed that the priest has virtually consented in advance, when such removal is deemed expedient by the ordinaries, a simple denial is all that is required in answer, for the Holy See has not authorized such a far-fetched interpretation. The Holy See does not thus treat the free will of priests and the rights of third parties, and superiors, it seems, would scarcely be justified in thus explaining the oath to young men before ordination, without an authentic interpretation of the Holy See in explanation of its decree. Meanwhile the one fact that the bishops did not ask to be allowed authority to transfer priests in *any* circumstances without their consent, is a sufficient proof that the Holy See granted no such permission, even implicitly.

534. Removal from office, or deprivation of one's benefice, is a canonical punishment by which an ecclesiastic loses his parish or office without being appointed to another, but nevertheless without being disqualified from holding office in the future. Hence it differs from a penal transfer which is a less punishment, and from deposition which is a greater one, because this last disqualifies a person from

holding office also for the future. The punishment of removal or dismissal can be inflicted on incumbents of any ecclesiastical office, but it is especially severe on those who have the cure of souls, either as irremovable or as movable rectors. It is held to be equivalent to social or civil death; and is one of the severest or greatest of the regular or ordinary punishments of the church. Hence it cannot be inflicted except for crime judicially proven. For this reason when an ecclesiastic because of inexperience, want of knowledge or ability, or because of old age or ill health becomes unable to discharge the duties of his office, parish or benefice, he cannot be deprived of it, (*c. 5, de cler. ægro. 3, 6.*) but simply an assistant or coadjutor must be assigned to him. (*Cf. c. 3, 4, de cler. æg. 3, 6; Con. Trid. sess. 21, c. 6; DeAngelis, l. 3, t. 6, n. 2.*)

535. Irremovable rectors in the United States can be deposed only 1° for crime. 2° The crime must be grave and atrocious. 3° The crime must be expressly stated in law as punishable by deprivation of office. 4° The crime must be fully proved by a judicial trial, following the "Cum magnopere." This trial is required also when a crime is charged which *ipso facto* deprives the incumbent of his office. 5° Before removal is decreed all preventive remedies must have been tried in vain, and then after trial the milder repressive punishments, such as suspension, must first be tried in vain before dismissal may be decreed. Thus all canonists say that dismissal must be used only as a last resort and then by judicial sentence. For the effect of this sentence on appeal, see n. 106 on page 105.

The crimes for which dismissal of an irremovable rector may be ordered are: Alienation of property of the parish without the solemnities of law; simony, real or confidential; heresy, falsification of apostolic letters, striking a cardinal of the Holy Roman church, assassination, sodomy, all of which crimes deprive an incumbent of his benefice *ipso jure*; only a declaratory sentence being required after citation. To these are added several from the Third Council of Baltimore, for which see n. 105 above on page 104, or Third Council of Baltimore n. 38.

536. It is certain that a movable rector can be removed from office or dismissed only as a punishment for crime or for a breach of discipline, and then only after a trial according to "Cum magnopere." (*S. Cong. Prop. 28 Mar. 1887.*) Not for a trivial offense, but only for a serious one may these rectors be dismissed. Moreover they cannot be even transferred without a trial, when crime or a breach of discipline is the alleged reason. However, the crime need not be so serious as in the case of an irremovable rector. The present position of a movable rector seems somewhat anomalous; for when charged with crime he is entitled to a trial before he can be transferred, and pending the trial may retain possession of his parish; but if he is without fault and is transferred, even to an inferior place, he must vacate his parish immediately, and can only make a recourse to the Holy See or the Apostolic Delegation. After patiently awaiting a decision, even if finally re-instated, he has no redress for the illegal expenses entailed upon him, nor for the inevitable loss of good name because of the attempted transfer.

537. When an ecclesiastic is dismissed from his parish, even for crime as stated above, he is not and cannot be deprived of necessary support; though he has no claim to the comforts of life. (*Cf. Smalzgrueber, l. 5, t. 39, n. 305; Munchen, vol. 2, pg. 234; Stremler, Peines, pg. 31-33; III Coun. Balt. n. 72; S. Cong. Prop. Feb. 4, 1873.*)

If the dismissed ecclesiastic has sufficient means of his own, not however from his family or friends, the bishop is not obliged to give him even the necessaries of life. (*Cf. Glossa, c. 25 de elect. 1, 6.*) Otherwise the bishop certainly is obliged to do so, especially if the priest has been ordained *titulo missionis.* So long as there is a chance for repentance, such moderate support must be given according to the decree of the Propaganda, of Feb. 4, 1873. When, however, after repeated trials and warnings the dismissed cleric, no matter what was his office, is found unrepentant and persistent in a criminal life, then "after the bishop has given him a previous declaration to the effect that because of such unworthiness he remains deprived of the title of mission and consequently of the right to support from the diocese; just so long as the priest perseveres in his evil course without giving any signs of sincere repentance, the bishop is not obliged to give him support." Support for dismissed ecclesiastics might well be taken from the fines assessed in court as punishments. (See n. 525 above.) Support for ecclesiastics temporarily suspended should be taken from their parish or office.

538. From this decision of the Propaganda it is certain, conversely, that worthy priests even if in ill

health and incapacitated for work are nevertheless, because of the title of mission, entitled to support from the diocese, and the bishop is obliged to see that they receive it. Neither can this support be a mere pittance, but it must be a congruous support, giving not only the absolute necessaries but also the ordinary comforts of life. Further, it is also certain from the same decision that as a final punishment even after dismissal the bishop may make a declaration that the offending ecclesiastic has forfeited his title of ordination, that of mission. This declaratory sentence cuts him off from all support; but even this declaration must be withdrawn when the priest shows signs of repentance. He must then again be given necessary support.

539. Regarding the title of mission mentioned above, when a priest is declared deprived of it, he has really no title. But if he is ordained by the title of patrimony, it cannot be forfeited and from the income of such title he may derive support even under censure or dismissal. The Propaganda distinctly advises that so far as possible other legitimate titles instead of that of mission be introduced for ordination. Further when a priest ordained by other title than that of mission changes his diocese, he is not to take any oath, but only to make obedience to the ordinary of his new diocese. In n. 194 above, it is said, "a virtual incardination into a diocese, no matter what the title, occurs *ipso facto* at the expiration of three or five years' service unless the bishop has explicitly stated the contrary to the priest before the end of such respective period." But this should not be understood to exclude any other incardination.

With the consent of both bishops interested, a priest may at once be given an *exeat* from one diocese and a written *ineat* into another, notice of the acceptance being given to the bishop giving the *exeat*. If the priest is not ordained *titulo missionis*, no other formality is required. If ordained by the title of mission since Nov. 30, 1885, and the dioceses are in the same province then nothing more is required, for the oath is now widened so as to allow him to work anywhere in the province. If ordained by the title of mission before Nov. 30, 1885, he simply renews the oath for his new diocese without consulting the Holy See. But when the dioceses are in a different province then a new oath is to be taken and permission of the Holy See obtained. However if the bishop, before accepting the applicant, wishes to give him a trial, he may do so first for three years; and if this term is not deemed sufficient, it may be prolonged two years more, provided the bishop has given the priest proper notice before the expiration of the term of three years to the effect that he wishes the term of trial extended so as to make five years in all. Meantime the priest retains his title, whatever it be, and his right to his old diocese. Before the end of the five years' term the bishop is obliged to inform the priest if he declines to admit him; otherwise by the expiration of the five years the priest becomes *ipso facto* incardinated into the new diocese. The term of three years and again of five years, like other terms in *re beneficiaria*, is to be strictly construed to the very day. Such, too, has been the holding of the Apostolic Delegation in several cases, and especially in one of 1896, wherein the question

was introduced whether the term began with the date of the bishop's letter of acceptance for trial, or with the date of actual taking possession of a mission in the diocese, which occurred some days later.

The following form may be used for letters of conditional excardination which become absolute per se when the priest is admitted into another diocese, but up to such time require for safety an annual report to the bishop under whose jurisdiction the priest still remains:

"N. Episcopus N—. Dilecto Nobis in Christo Revdo N. N. salutem in Domino:

Cum tu, Revde Domine, propter rationes a Nobis cognitas et admissas, ab hac nostra diœcesi definitive excorporari cupias ut in aliam (seu in diœcesim N.) ineas, decretis III Conc. Plen. Balt. inhærentes, votis tuis libenter annuimus; attestantes te esse sacerdotem bonis moribus imbutum et ab hac nostra diœcesi abire nulla censura ecclesiastica neque alio canonico impedimento aut pœna, quod sciamus, irretitum. Volumus autem, ut præsentes litteras in eventu incorporationis sive formalis sive præsumptivæ in aliam diœcesim *ipso facto* futuræ sint litteræ excardinationis. Ceterum, præcipimus ut singulis annis a die præsenti computandis, donec in aliam diœcesim non sis legitime cooptatus, certiores Nos facias de munere cui incumbas et de valitudine, sub pœna suspensionis Nobis reservatæ ipso facto incurrenda, trigesimo die post annum elapso. In quorum fidem præsentes litteras manu nostra signatas sigilloque nostro munitas exarari jussimus. Datum &c.

[L. S.] N. Episcopus N.

N. Cancellarius."

540. More severe than removal from office is the punishment of deposition, which means that an ecclesiastic is forever deprived of his office or benefice

and also of the right to exercise the functions or power of his *ordo*. This punishment entails infamy, and usually disqualification from holding office for the future is attached to it in the sentence. Even after full penance and amendment, the deposed person has no right to be restored. The bishop, while not obliged, may reinstate him if he judges fit, provided the crime was not atrocious, such as wilful murder. Deposition can be imposed only for crimes which are enormous, give great scandal, and are expressly stated in law as meriting deposition, such as wilful murder, public concubinage, &c.

541. Degradation, which is rarely inflicted to-day, is a canonical punishment by which an ecclesiastic is wholly and forever deprived of the exercise of the power of orders, and also of all benefices, and is reduced to the state of a layman. Degradation can be inflicted only for enormous crimes and only when the law especially attaches such punishment, and then as a last resort. At present the bishop can inflict verbal degradation, i. e. by sentence; but actual degradation or the execution of the sentence formerly could be had only by twelve bishops assisting to impose it on a bishop, six bishops on a priest, and three bishops on a deacon. At present the bishop, instead of being bound to have six bishops or three respectively, can use six or three mitred abbots, or also other persons in dignity, who are of great weight by their age and knowledge of canon law. These persons are actually associate judges and have not only a deliberative but a decisive vote in the sentence.

All vindicatory punishments must be inflicted as a

definitive sentence after trial, or as a declaratory sentence after trial when the law *ipso facto* imposes the punishment. The forms for such sentences are given above in n. 429 and 499. Infamy and irregularity are also serious punishments consequent on crime, and often included with other punishments. They are prohibitive from orders and benefices and require an explicit dispensation. While irregularity for crime and also for infamy is contracted *ipso facto*, still for the external forum a declaratory sentence is generally required. This declaration may be included in the sentence for the crime after trial. For a more extensive treatment of these punishments special works on canon law should be consulted.

CHAPTER XXIII.

EXCOMMUNICATIONS, SUSPENSIONS, INTERDICTS LATÆ SENTENTIÆ.

542. For convenient reference a list of the censures which are *latæ sententiæ* throughout the world is given below:

PRIMA TABELLA.

In hac prima tabella continentur excommunicationes Romano Pontifici *specialiter* reservatae.

1. Omnes a christiana Fide apostatas et omnes ac singulos haereticos, quocumque nomine censeantur et cujuscumque sectae exsistant, eisque credentes; eorumque receptores, fautores, ac generaliter quoslibet illorum defensores.

2. Omnes et singulos scienter legentes sine auctoritate Sedis Apostolicae libros eorumdum apostatarum et haereticorum haeresim propugnantes, necnon libros cujusvis auctoris per Apostolicas Litteras nominatim prohibitos, eosdemque libros retinentes, imprimentes et quomodolibet defendentes.

3. Schismaticos, et eos qui a Romani Pontificis pro tempore exsistentis obedientia pertinaciter se subtrahunt, vel recedunt.

4. Omnes et singulos, cujuscumque status, gradus seu conditionis fuerint, ab ordinationibus seu mandatis Romanorum Pontificum pro tempore exsistentium ad universale futurum Concilium appellantes, nec non eos, quorum auxilio, consilio vel favore appellatum fuerit.

5. Omnes interficientes, mutilantes, percutientes, capientes, carcerantes, detinentes, vel hostiliter insequentes S. R. E. Cardinales, Patriarchas, Archiepiscopos, Episcopos, Sedisque Apostolicae Legatos vel Nuntios, aut eos a suis Dioecesibus, Territoriis, Terris seu Dominiis ejicientes, nec non ea mandantes vel rata habentes seu praestantes in eis auxilium, consilium vel favorem.

6. Impedientes directe vel indirecte exercitium jurisdictionis ecclesiasticae sive interni sive externi fori, et ad hoc recurrentes

ad forum saeculare, ejusque mandata procurantes, edentes, aut auxilium, consilium vel favorem praestantes.

7. Cogentes sive directe sive indirecte judices laicos ad trahendum ad suum tribunal personas ecclesiasticas praeter canonicas dispositiones; item edentes leges vel decreta contra libertatem aut jura Ecclesiae.

8. Recurrentes ad laicam potestatem ad impediendas litteras vel acta quaelibet a Sede Apostolica, vel ab ejusdem Legatis aut Delegatis quibuscumque profecta, eorumque promulgationem vel executionem directe vel indirecte prohibentes, aut eorum causa sive ipsas partes sive alios laedentes vel perterrefacientes.

9. Omnes falsarios Litterarum Apostolicarum, etiam in forma Brevis ac supplicationum gratiam vel justitiam concernentium per Romanum Pontificem, vel S. R. E. Vice-Cancellarios seu Gerentes vices eorum aut de mandato ejusdem Romani Pontificis signatarum; nec non falso publicantes Litteras Apostolicas, etiam in forma Brevis, et etiam falso signantes supplicationes hujusmodi sub nomine Romani Pontificis, seu Vice-Cançellarii aut Gerentis vices praedictorum.

10. Absolventes complicem in peccato turpi etiam in mortis articulo, si alius Sacerdos, licet non approbatus ad confessiones, sine gravi aliqua exoritura infamia et scandalo possit excipere morientis confessionem.

11. Usurpantes aut sequestrantes jurisdictionem, bona, reditus ad personas ecclesiasticas, ratione suarum ecclesiarum aut beneficiorum pertinentes.

12. Invadentes, destruentes, detinentes per se vel per alios, civitates, terras, loca aut jura ad Ecclesiam Romanam pertinentia; vel usurpantes, perturbantes, retinentes supremam jurisdictionem in eis; nec non ad singula praedicta auxilium, consilium, favorem praebentes.

13. a) Canonici ac Dignitates Cathedralium Ecclesiarum vacantium, qui ausi fuerint concedere et transferre Ecclesiae vacantis curam, regimen et administrationem sub quovis titulo, nomine, quaesito colore, in nominatum et praesentatum a laica potestate, ante exhibitionem Literarum Apostolicarum.

b) Nominati et praesentati vel ut supra electi ad vacantes Ecclesias, qui earum curam, regimen et administrationem suscipere audent sub nomine Provisoris, Vicarii generalis aliove nomine, ex concessione et translatione in eis peracta a Dignitatibus et Canonicis, aliisque qui, deficientibus Capitulis, Vicarios deputant aut vacantes Ecclesias legitime administrant.

c) Ii omnes qui praemissis paruerint, vel auxilium, consilium

aut favorem praestiterint, cujuscumque status, conditionis, praeeminentiae et dignitatis fuerint.

14. Omnes et singuli nomine dantes, vel quomodocumque faventes, vel adhaerentes Societati in eum finem institutae, vel instituendae ut, quandocumque Apostolica Sedes vacaverit, populus Romanus concurrat in summi Pontificis electione.

SECUNDA TABELLA.

543. In hac secunda tabella referuntur omnes excommunicationes quae sunt *simpliciter* reservatae Romano Pontifici.

1. Docentes vel defendentes sive publice sive privatim propositiones ab Apostolica Sede damnatas sub excommunicationis poena latae sententiae; item docentes vel defendentes tamquam licitam praxim inquirendi a poenitente nomen complicis, prouti damnata est a Benedicto XIV in Const. *Suprema*, 7 Jul. 1745; *Ubi primum* 2 Julii 1746; *Ad eradicandum*, 28 Septembris 1746.

2. Violentas manus, suadente diabolo, injicientes in Clericos vel utriusque sexus Monachos, exceptis quoad reservationem casibus et personis, de quibus jure vel privilegio permittitur, ut Episcopus aut alius absolvat.

3. Duellum perpetrantes, aut simpliciter ad illud provocantes vel ipsum acceptantes, et quoslibet complices vel qualemcumque operam aut favorem praebentes, nec non de industria spectantes, illudque permittentes vel, quantum in illis est, non prohibentes, cujuscumque dignitatis sint, etiam regalis vel imperialis.

4. Nomen dantes sectae *Massonicae* aut *Carbonariae* aut aliis ejusdem generis sectis, quae contra Ecclesiam vel legitimas potestates seu palam, seu clandestine machinantur, nec non iisdem sectis favorem qualemcumque praestantes; earumve occultos coryphaeos ac duces non denuntiantes, donec non denuntiaverint.

5. Immunitatem asyli ecclesiastici ausu temerario violare jubentes aut violantes.

6. Violantes clausuram Monialium, cujuscumque generis aut conditionis, sexus vel aetatis fuerint, in earum Monasteria absque legitima licentia ingrediendo; pariterque eos introducentes vel admittentes; itemque Moniales ab illa exeuntes extra casus ac formam a S. Pio V in Const. *Decori* praescriptam.

7. Mulieres violantes Regularium virorum clausuram, et Superiores aliosve eas admittentes.

8. Reos simoniae realis in beneficiis quibuscumque eorumque complices.

9. Reos simoniae confidentialis in beneficiis quibuslibet, cujuscumque sint dignitatis.

10. Reos simoniae realis ob ingressum in Religionem.

11. Omnes qui, quaestum facientes ex Indulgentiis aliisque gratiis spiritualibus, excommunicationis censura plectuntur Const. S. Pii V, *Quam plenum*, 2 Jan. 1569.

12. Colligentes eleemosynas majoris pretii pro Missis et ex iis lucrum captantes faciendo eas celebrari in locis, ubi Missarum stipendia minoris pretii esse solent.

13. Omnes qui excommunicatione mulctantur in Constitutionibus S. Pii V, *Admonet nos*, quarto kalendas Aprilis 1567; Innocenti IX, *Quae ab hac Sede*, pridie nonas Novembris 1591; Clementis VIII, *Ad Romani Pontificis curam*, 25 Junii 1592, et Alexandri VII, *Inter ceteras*, nono kalendas Novembris 1660, alienationem et infeudationem civitatum et locorum S. R. E. respicientibus.

14. Religiosi praesumentes Clericis aut laicis extra casum necessitatis Sacramentum Extremae Unctionis aut Eucharistiae per viaticum ministrare absque Parochi licentia.

15. Extrahentes absque legitima venia reliquias ex sacris Coemeteriis sive Catacumbis Urbis Romae ejusque territorii, eisque auxilium vel favorem praebentes.

16. Communicantes cum excommunicato nominatim a Papa in crimine criminoso, ei scilicit impendendo auxilium vel favorem.

17. Clericos scienter et sponte communicantes in divinis cum personis a Romano Pontifice nominatim excommunicatis et ipsos in Officiis recipientes.

18. Absolvere praesumentes ab excommunicationibus Romano Pontifici speciali modo reservatis, etiam quovis praetextu, revocatis indultis concessis sub quavis forma et quibusvis personis etiam Regularibus cujuscumque Ordinis, Congregationis, Societatis et Instituti, etiam speciali mentione dignis et in quavis dignitate constitutis.

19. Si quem Clericorum vel laicorum, quacumque is dignitate, etiam imperiali aut regali, praefulgeat, in tantum malorum omnium radix cupiditas occupaverit, ut alicujus ecclesiae seu cujusvis saecularis vel regularis beneficii, montium pietatis, aliorumque piorum locorum jurisdictiones, bona, census ac jura etiam feudalia et emphyteutica, fructus, emolumenta seu quascumque obventiones, quae in ministrorum et pauperum necessitates converti debent, per se vel per alios vi vel timore incusso, seu etiam per suppositas personas Clericorum aut laicorum, seu quacumque arte aut quocumque quaesito colore in proprios usus convertere, illosque usurpare praesumpserit, seu impedire ne ab iis, ad quos jure pertinent, percipiantur; is anathemati tamdiu subjaceat, quamdiu jurisdictiones, bona, res, jura, fructus et reditus, quos

occupaverit vel qui ad eum quomodocumque, etiam ex donatione suppositae personae, pervenerint, ecclesiae ejusque administratori sive beneficiato integre restituerit, ac deinde a Romano Pontifice absolutionem obtinuerit.—Ex Conc. Trid. sess. 22, c. 11, *de Reform.*

TERTIA TABELLA.

544. Haec tertia tabella continet excommunicationes Episcopis sive Ordinariis locorum reservatas.

1. Clericos in Sacris constitutos vel Regulares aut Moniales post votum solemne castitatis Matrimonium contrahere praesumentes; nec non omnes cum aliqua ex praedictis personis Matrimonium contrahere praesumentes.

2. Procurantes abortum, effectu secuto.

3. Litteris Apostolicis falsis scienter utentes vel crimini ea in re cooperantes.

4. Laici turpe mercimonium circa missarum stipendia exercentes. Decr. Congr. Conc. "Vigilanti studio," d. d. 25 Maji 1893.

QUARTA TABELLA.

545. In hac tabella continentur excommunicationes nemini reservatae.

1. Mandantes seu cogentes tradi ecclesiasticae sepulturae haereticos notorios aut nominatim excommunicatos vel interdictos.

2. Laedentes aut perterrefacientes Inquisitores, denuntiantes testes, aliosve ministros S. Officii, ejusve Sacri Tribunalis scripturas diripientes, aut comburentes, vel praedictis quibuslibet auxilium, consilium, favorem praestantes.

3. Alienantes et recipere praesumentes bona ecclesiastica absque beneplacito Apostolico, ad formam extravagantis *Ambitiosae* de Reb. Eccl. non alienandis.

(*Extrav. comm. l. 3, t. 4, cap. unic. de rebus Ecclesiae non alienandis.*)

4. Negligentes sive culpabiliter omittentes denuntiare infra mensem Confessarios sive Sacerdotes, a quibus sollicitati fuerint ad turpia in quibuslibet casibus expressis a Praedecess. Nostris Gregorio XV, Constit. *Universi*, 20 Augusti 1622, et Benedicto XIV, Constit. *Sacramentum Poenitentiae*, 1 Junii 1741.

5. Libros de rebus sacris tractantes sine Ordinarii approbatione imprimentes aut imprimi facientes.

6. Bonifacii VIII Constitutionem, quae incipit *Periculoso*, renovans sancta Synodus, universis Episcopis sub obtestatione divini judicii et interminatione maledictionis aeternae praecipit, ut in omnibus Monasteriis sibi subjectis ordinaria, in aliis vero Sedis Apostolicae auctoritate, clausuram Sanctimonialium, ubi violata

fuerit, diligenter restitui, et ubi inviolata est, conservari maxime procurent, inobedientes atque contradictores per censuras ecclesiasticas aliasque poenas, quacumque appellatione postposita, compescentes, invocato etiam ad hoc, si opus fuerit, auxilio brachii saecularis. Quod auxilium, ut praebeatur, omnes christianos Principes hortatur sancta Synodus, et sub excommunicationis poena ipso facto incurrenda, omnibus magistratibus saecularibus injungit. (*Sess.* 25, *c.* 5, *de Regul.*)

7. Decernit sancta Synodus, inter raptorem et raptam, quamdiu ipsa in potestate raptoris manserit, nullum posse consistere Matrimonium. Quod si rapta a raptore separata et in loco tuto et libero constituta illum in virum habere consenserit, eam raptor in uxorem habeat, et nihilominus raptor ipse ac omnes illi consilium, auxilium et favorem-praebentes, sint ipso jure excommunicati. (*Sess.* 24, *cap.* 6, *de Reform. Matrim.*)

8. Praecipit sancta Synodus omnibus, cujuscumque gradus, dignitatis et conditionis exsistant, sub anathematis poena, quam ipso facto incurrant, ne quovis modo directe vel indirecte subditos suos vel quoscumque alios cogant, quominus libere Matrimonia contrahant. (*Sess.* 24, *cap.* 9, *de Reform. Matrim.*)

9. Anathemati sancta Synodus subjicit omnes et singulas personas, cujuscumque qualitatis vel conditionis fuerint, tam Clericos quam laicos, saeculares vel Regulares, atque etiam qualibet dignitate fungentes, si quomodolibet coegerint aliquam virginem vel viduam, aut aliam quamcunque mulierem, praeterquam in casibus in jure expressis; ad ingrediendum Monasterium, vel ad suscipiendum habitum cujuscumque Religionis, vel ad emittendam professionem, quique consilium, auxilium vel favorem dederint, quique scientes eam non sponte ingredi Monasterium aut habitum suscipere, aut professionem emittere, quoquo modo eidem actui vel praesentiam vel consensum vel auctoritatem interposuerint. Simili quoque anathemati subjicit eos, qui sanctarum virginum vel aliarum mulierum voluntatem veli accipiendi vel voti emittendi quoquo modo sine justa causa impedierint. (*Sess.* 25, *Cap.* 18, *de Regul.*)

10. Omnes qui excommunicatione mulctantur in Constitutionibus Urbani VIII, *Ex debito*, die 21 Febr. 1633, et Clementis IX *Sollicitudo*, die 17 Julii 1669, respicientibus mercaturas et negotiationes saeculares in Indiis Orientalibus, et in America tam Australi, quam Septentrionali.

546. SUSPENSIONES IN CONST. "APOS. SEDIS" EXPRESSAE.

1. Suspensionem ipso facto incurrunt a suorum beneficiorum perceptione, ad beneplacitum S. Sedis, Capitula et conventus

Ecclesiarum et Monasteriorum, aliique omnes, qui ad illarum seu illorum regimen et administrationem recipiunt Episcopos aliosve Praelatos de praedictis Ecclesiis seu Monasteriis apud eamdem S. Sedem quovis modo provisos, antequam ipsi exhibuerint Litteras Apostolicas de sua promotione.

2. Suspensionem per triennium a collatione Ordinum ipso jure incurrunt aliquem ordinantes absque titulo beneficii vel patrimonii cum pacto, ut ordinatus non petat ab ipsis alimenta.

3. Suspensionem per annum ab Ordinum administratione ipso jure incurrunt ordinantes alienum subditum, etiam sub praetextu beneficii statim conferendi, aut jam collati, sed minime sufficientis, absque ejus Episcopi litteris dimissorialibus, vel etiam subditum proprium, qui alibi tanto tempore moratus sit, ut canonicum impedimentum contrahere ibi potuerit, absque Ordinarii ejus loci litteris testimonialibus.

4. Suspensionem per annum a collatione Ordinum ipso jure incurrit, qui, excepto casu legitimi privilegii, Ordinem sacrum contulerit absque titulo beneficii vel patrimonii Clerico in aliqua Congregatione viventi, in qua solemnis professio non emittitur, vel etiam Religioso nondum professo.

5. Suspensionem perpetuam ab exercitio Ordinum ipso jure incurrunt Religiosi ejecti, extra Religionem degentes.

6. Suspensionem ab Ordine suscepto ipso jure incurrunt, qui eumdem Ordinem recipere praesumpserunt ab excommunicato vel suspenso vel interdicto nominatim denuntiatis, aut ab haeretico vel schismatico notorio; eum vero qui bona fide a quopiam eorum est ordinatus, exercitium non habere Ordinis sic suscepti, donec dispensetur, declaramus.

7. Clerici saeculares exteri ultra quatuor menses in Urbe Roma commorantes ordinati ab alio quam ab ipso suo Ordinario absque licentia Card. Urbis Vicarii, vel absque praevio examine coram eodem peracto, vel etiam a proprio Ordinario posteaquam in praedicto examine rejecti fuerint; nec non Clerici pertinentes ad aliquem e sex episcopatibus suburbicariis, si ordinentur extra suam dioecesim, dimissorialibus sui Ordinarii ad alium directis quam ad Card. Urbis Vicarium; vel non praemissis ante Ordinem sacrum suscipiendum exercitiis spiritualibus per decem dies in domo urbana Sacerdotum a Missione nuncupatorum, suspensionem ab Ordinibus sic susceptis ad beneplacitum S. Sedis ipso jure incurrunt; Episcopi vero ordinantes ab usu pontificalium per annum.

547. SUSPENSIONES A CONCILIO TRIDENTINO LATAE.

1. Abbates, Collegia, Capitula et alii quicumque, dimissorias sibi

non subditis concedentes, ab officio et beneficio per annum sint ipso jure suspensi. (*Sess.* 23, *cap.* 10, *de Reform.*)

2. Ordinantes sibi non subditos, nisi horum probitas ac mores Ordinariorum suorum testimonio commendentur, a collatione Ordinum per annum; sic vero ordinati a susceptorum Ordinum executione, quamdiu proprio Ordinario videbitur expedire, sint suspensi. (*Sess.* 23, *cap* 8, *de Reform.*)

3. Nemo Episcoporum, qui titulares vocantur, etiamsi in loco nullius dioecesis, etiam exempto, aut aliquo Monasterio cujusvis Ordinis resederint, aut moram traxerint, vigore cujusvis privilegii sibi de promovendo quoscumque ad se venientes pro tempore concessi, alterius subditum, etiam praetextu familiaritatis continuae, commensalitatis suae, absque sui proprii Praelati expresso consensu aut litteris dimissoriis, ad aliquos sacros aut minores Ordines vel primam tonsuram promovere seu ordinare valeat. Contra faciens ab exercitio pontificalium per annum, taliter vero promotus ab executione Ordinum sic susceptorum, donec suo Praelato visum fuerit, ipso jure sint suspensi. (*Sess.* 14, *cap.* 2, *de Reform.*)

4. Nulli Episcopo liceat cujusvis privilegii praetextu pontificalia in alterius dioecesi exercere, nisi de Ordinarii loci expressa licentia, et in personas eidem Ordinario subjectas tantum. Si secus factum fuerit, Episcopus ab exercitio pontificalium, et sic ordinati ab executione Ordinum sint ipso jure suspensi. (*Sess.* 6, *cap.* 5, *de Reform.*)

5. Qui non arctatur occasione beneficii recepti vel recipiendi, et sede vacante, acceptis infra annum a die vacationis dimissoriis a Capitulo, ordinatur; si fuerit tali ordinatione in Minoribus constitutus, non gaudet privilegio clericali; si in Majoribus, ipso jure suspenditur ab eorum executione ad beneplacitum futuri Praelati. (*Sess.* 7, *cap.* 10, *de Reform.*)

6. Si quis Parochus vel alius Sacerdos, sive regularis sive saecularis sit, etiam si id sibi ex privilegio vel immemorabili consuetudine licere contendat, alterius parochiae sponsos sine illorum Parochi licentia Matrimonio conjungere aut benedicere ausus fuerit, ipso jure tamdiu suspensus maneat, quamdiu ab Ordinario ejus Parochi, qui Matrimonio interesse debebat, seu a quo benedictio suscipienda erat, absolvatur. (*Sess.* 24, *cap.* 1, *de Reform.*)

7. Episcopi, quod absit, si concubinas aut alias mulieres de quibus possit haberi suspicio, in domo vel extra detineant, aut cum iis ullam consuetudinem habeant, et a synodo provinciali admoniti se non emendaverint, ipso facto sint suspensi. (*Sess.* 25, *cap.* 14, *de Reform.*)

8. Contrahentes excommunicationem latae sententiae Rom. Pontifici speciali modo reservatam, si episcopali charactere sint insig-

niti, in poenam suspensionis ab exercitio pontificalium, et interdicti ab ingressu ecclesiae ipso facto, absque ulla declaratione, incidunt, S. Sedi pariter *speciali modo* reservatam. (*Const. Romanus Pontifex.*)

9. Ex decreto S. C. C. d. d. 25 Maji 1893 Sacerdotes turpe mercimonium circa missarum stipendia agentes ipso facto suspensionem a divinis S. Sedis reservatam incurrunt; item clerici nondum sacerdotes eandem suspensionem quoad susceptos ordines incurrunt et inhabiles fiunt ad superiores ordines recipiendos. ("*Vigilanti Studio,*" *Maii* 25, 1893, *S. C. C.*)

548. INTERDICTA IN CONST. "APOS. SEDIS" CONTENTA.

1. Interdictum Romano Pontifici speciali modo reservatum ipso jure incurrunt Universitates, Collegia et Capitula, quocumque nomine nuncupentur, ab ordinationibus seu mandatis ejusdem Romani Pontificis pro tempore exsistentis ad universale futurum Concilium appellantia.

2. Scienter celebrantes vel celebrari facientes divina in locis ab Ordinario, vel delegato Judice, vel a jure interdictis; aut nominatim excommunicatos ad divina Officia, seu ecclesiastica Sacramenta, vel ecclesiasticam sepulturam admittentes, interdictum ab ingressu ecclesiae ipso jure incurrunt, donec ad arbitrium ejus, cujus sententiam contempserunt, competenter satisfecerint.

549. INTERDICTA LATA A CONCILIO TRIDENTINO.

3. Metropolitanus suffraganeos Episcopos absentes, Metropolitanum vero absentem suffraganeus Episcopus antiquior residens, sub poena interdicti ecclesiae eo ipso incurrenda infra tres menses per litteras seu nuntium Romano Pontifici denuntiare teneatur. (*Sess.* 6, *cap.* 1, *de Reform.*)

4. Capitulum, Sede vacante, dans infra annum a die vacationis, dimissorias ad Ordines, ei qui non arctatur occasione beneficii recepti vel recipiendi, ecclesiastico subjacet interdicto. (*Sess.* 7, *cap.* 10, *de Reform.*)

550. The specific vindicatory punishments attached to various crimes by the sacred canons may be found in the Corpus Juris from which the law should be quoted in the sentence. Faults against discipline are usually specified in diocesan statutes and the sanction therein laid down, if not extravagant, can be inflicted after due trial. Hence it seems unnecessary, and for other reasons also inadvisable, to insert in this Formulary a list of crimes and the specific punishment attached to each.

CHAPTER XXIV.

THE "CUM MAGNOPERE."

Instruction of the Sacred Congregation de Prop. Fide on the manner of proceeding which must be observed in the United States of North America, where there is question of hearing and deciding criminal and disciplinary causes of ecclesiastics.

This sacred Council deems it of great importance that in ecclesiastical trials such a method of proceeding shall be observed, as will be well adapted to the wants of the times, wholly adequate to the regular administration of justice, and fully sufficient to protect the authority of Prelates, as well as to stop complaints on the part of the accused. Hence it has pleased this Sacred Congregation to re-examine all those enactments which were made in this matter for the United States of North America, and laid down in the Instruction of July 20, 1878, and in the subsequent Response to doubts concerning the same. Therefore, the Sacred Congregation having maturely weighed all things, with the approval of our Most Holy Father, Pope Leo XIII, has decreed that what follows shall be observed in future, and that consequently the previous Instruction and the subsequent Declarations are hereby abrogated, with the exception of what is contained in the present Instruction.

I. The Ordinary is bound, by virtue of his pastoral office, diligently to look after the discipline and correction of ecclesiastics. Hence he should watch assiduously over their conduct, and make wise use of the remedies established by the canons, for the purpose either of preventing or of doing away with abuses which sometimes creep in among the clergy.

II. These remedies are of two kinds; some are *preventive*, others *repressive*. The former have for their object the prevention of evils, the removing of causes of scandal, and the avoiding of voluntary proximate occasions of sin. The latter are established for the purpose of recalling the delinquent to the path of duty, and of taking away the effects of the offences committed by him.

III. The application of any of these remedies is left to the conscientious discretion of the Ordinary, provided, however, the pre-

scriptions of the sacred canons be observed, according to the gravity of the case and the attendant circumstances.

IV. The following are the chief preventive remedies: Spiritual exercises, admonitions, precepts.

V. However, before they are imposed upon any one, the facts calling for them must be verified in a summary manner. The Ordinary should take care to preserve a written record of this summary verification or inquiry, in order that he may be able, if need be, to proceed to ulterior measures, and in the case of lawful recourse, to give an accurate account of the entire affair to the higher ecclesiastical authority.

VI. The canonical warnings may be made either secretly (also by letter, or by means of a third person), by way of paternal correction, or they may be given with the formalities prescribed by law, provided always that the fact of their having been really given appears from some act.

VII. If the admonitions fail to produce any effect, the Ordinary will order the curia to communicate to the delinquent a precept analogous to the warnings. This precept should state what the delinquent must do or avoid, and also explain what ecclesiastical punishment will be inflicted upon him in case he disobeys the precept.

VIII. The precept will be enjoined upon the delinquent by the chancellor of the curia, in the presence of the vicar general, or of two ecclesiastics, or laics of probity, as witnesses.

1° The act of the enjoining of the precept is signed by the parties present, and also by the delinquent, if he wishes.

2° The vicar general can impose upon the witnesses the oath to observe secrecy, if this is prudently required, on account of the nature of the case.

IX. So far as concerns *repressive* remedies or punishments, Ordinaries will remember that the extrajudicial remedy established by the council of Trent, sess. XIV, cap. 1, de Ref., for occult crimes, remains in full force.

X. In a criminal action instituted either for the violaiion of the precept or for common crimes, or for the transgression of ecclesiastical laws, the trial will be conducted in a summary manner and without the nice formalities of solemn trials, yet so that the rules of justice be always observed in all their substance.

XI. The trial is begun *ex officio*, and that either on cccasion of complaints, or of accusations, or of information brought to the curia in any way whatever; and is carried to its end in such a manner that the truth will, in all sincerity and prudence, be discov-

ered and that a clear knowledge will be obtained both of the crime itself and the guilt or innocence of the accused.

XII. Where *curiae* are already established the *compilatio processus*, that is, the conduct of the trial, consisting in the gathering together of the evidence of both parties, may be entrusted to a worthy and expert ecclesiastic, who shall be attended by a secretary.

In those dioceses, however, in which episcopal courts cannot as yet be established, the Instruction of 1878, together with the subsequent answer to the proposed doubts concerning the same, shall be meanwhile observed. That is, each bishop, after having heard the advice of his clergy assembled in diocesan synod—which advice, however, he is not bound to follow—shall appoint five, or where this number cannot be had, at least three of the most worthy priests, and who are, as far as possible, learned in canon law, to discharge the duties outlined in said Instruction. Where, for some grave reason, the synod cannot be held, five or three ecclesiastics, as above, will be appointed by the bishop to this office. The members thus chosen will remain in office till the next diocesan synod, when they may be confirmed or others selected in their stead. But should the prescribed number of these councillors be sometimes lessened whether by death, resignation or other cause, the bishop, having taken the advice of the remaining menbers of the Commission, will appoint others in their stead. This Commission of Consultors, which is bound by oath to discharge its duties faithfully, will conduct its proceedings under the presidency of the bishop or his vicar general. However, the summing up or final defense of the accused must be made in writing, in the manner laid down in the present Instruction.

XIII. A diocesan procurator shall be appointed in every episcopal curia, in order that justice and law may be upheld.

XIV. For delivering intimations and notices where no official messengers are attached to the curia, the bishop shall employ some reliable person who shall deliver them and inform him of such delivery. These notices may also be sent by the curia, by registered mail, (where this postal system exists), in which case a receipt of their having been accepted or refused, should be obtained.

Intimations and notifications must always be absolutely in writing.

XV. The groundwork upon which the procurator fiscalis bases his charges, so far as the offense or crime is concerned, can be obtained from the information obtained in the manner indicated

above, under articles V and XI. This expose or information should be corroborated by inquiries from authentic sources, or by extra-judicial confessions, or by the depositions of witnesses. This groundwork, so far as the violation of the precept is concerned is obtained from the precept itself, and the acts of its having been enjoined in accordance with articles VII and VIII.

XVI. However, in order to assume the accused guilty, so as to cite him for trial and eventually convict him, legal proof is required. This legal proof must be made up of such elements as will really and fully demonstrate the truth, or at least create a moral conviction of the guilt of the accused and remove all reasonable doubt to the contrary.

XVII. Persons who are subjected to examination are heard separately, that is, apart from each other.

XVIII. The witnesses, whether for the prosecution or for the defence, in case the secular law does not forbid it, should take the oath to tell the truth and also if the case demands it to observe secrecy. Consequently, before they testify they shall swear that they will tell the truth and also observe secrecy. With greater reason, all those who take any part in the proceedings, by virtue of their office, must swear that they will discharge their duties faithfully and also observe secrecy, as far as the nature of the case requires.

XIX. Witnesses who are in a distant part of the diocese, or in a different diocese altogether, shall be examined by the ecclesiastical authority of the place where they are. For this purpose a statement of the case is transmitted to it. This authority shall, in complying with the request to examine the witnesses, observe the rules laid down in this Instruction.

XX. Should witnesses be pointed out who ought to be examined respecting facts or circumstances which have reference to the substantial merits of the cause, and who, nevertheless, cannot be examined, either because it is not lawful or proper to cite them to appear in court, or because they refuse to appear, after having been asked to appear, it becomes necessary to mention this in the acts, and their absence is supplied by the testimony of other witnesses who know of the facts either from hearsay or from other sources.

XXI. When all the evidence has been collected which goes to show the truth of the facts in the case and the guilt of the accused, the latter is called to trial by a written summons or intimation.

XXII. In the citation, unless prudence forbids, the accusations

brought against the accused are stated in full so that he may prepare for his defence.

XXIII. But if, on account of the character of the accusations, or for some other cause, it is not expedient to express the accusations in the citation, it will be sufficient to intimate in it that the accused is called to trial in order to defend himself in a matter which is under investigation.

XXIV. If he refuses to appear for trial he is summoned a second time. In this second citation a peremptory term is fixed, within which the accused must appear, and he is informed that if he fails to obey he will be adjudged contumacious. Should he also refuse to comply with this second citation, without proving a legitimate hindrance, he shall, as a matter of fact, be regarded as contumacious.

XXV. But if he appears in court he should be heard. And if he makes statements of any consequence they should, as far as possible, be accurately discussed.

XXVI. The next step is the plea or contestation of the offence and of the proofs extant which go to show that the accused should be considered guilty and has rendered himself liable to canonical punishments.

XXVII. When the accused, from what has taken place thus far, knows all that is contained in the acts against him, he can make his defence and therefore produce his witnesses, etc. He can also, if he wishes, make use of the right to hand in a written defence which must be signed by himself.

XXVIII. He can, moreover, if he asks for it, obtain a suitable delay to enable him to present this written defence, especially where on account of what is said in article XXIII he has not been able to get ready his reply to the accusations brought against him.

XXIX. When the trial is over the auditor shall make out a written synopsis of the principal evidence submitted on both sides and of the legal deductions flowing from it.

XXX. On the day on which the final summing up will take place the accused will have the right to make his final defence or summing up in writing through another priest acting for him and in his name. But if he does not find a competent priest to do this he can employ a Catholic layman. Each of these, however, must be approved by the ordinary.

XXXI. Should the accused decline to appoint an advocate the ordinary will *ex officio* designate one for him.

XXXII. The advocate will, under due precautionary measures examine the entire process and its synopsis in the chancery of the curia, in order that he may be able to defend the accused. And

he will hand in the defence or summing up, in writing, prior to the day on which the case is to be proposed and final sentence pronounced. He is also obliged to take the oath to observe secrecy, should the judge believe that the nature of the case demands it.

XXXIII. The trial and its resume are sent to the procurator fiscalis in order that he may be able to fulfill the duties of his office. After the procurator fiscalis has handed in his written summing up the latter is communicated to the advocate of the accused so that he may, if he chooses, reply to it in writing. Thereupon all the acts are remitted to the ordinary who, after acquiring a full knowledge of the case, fixes a day for the pronouncing of the final sentence.

XXXIV. On the day appointed the bishop or his vicar general pronounces the sentence, in the presence of the diocesan prosecutor and of the advocate of the accused, dictating its dispositive part to the chancellor, and making express mention, in case he pronounces condemnatory sentence, of the ecclesiastical law sanctioning the punishment, which is applied to the accused.

XXXV. The sentence shall then be delivered to the accused, who can appeal to the authority of the higher instance.

XXXVI. In the appeal it will be necessary to observe the regulations made by Pope Benedict XIV, of holy memory, in his constitution *Ad Militantis*, March 30, 1742, as also those rules which are laid down by the Sacred Congregation of Bishops and Regulars, in the decree of Dec. 18, 1835, and in the circular of Aug. 1, 1851.

XXXVII. The appeal should be interposed within the space of ten days from the time the sentence was served on the accused. When this term has elapsed and no appeal has been made the sentence can be executed.

XXXVIII. However, when the appeal is interposed, the curia shall forthwith transmit to the ecclesiastical authority of the higher instance all the acts of the cause in their originals, namely the trial, its synopsis, the summing up and the sentence.

XXXIX. The authority of the higher instance, having been informed of the appeal, commands the appellant to appoint, within thirty days, an advocate for himself, who must be approved by it.

XL. When the peremptory space of 30 days has expired and the accused has not presented any advocate, he is regarded as having given up the benefit of appealing. Consequently the judge of the higher instance shall declare the appeal extinct.

XLI. In the appeal from the sentence of the episcopal curia to the Metropolitan's curia the archbishop will, in hearing and decid-

ing the cause, use the same mode of proceeding which is outlined in this Instruction.

XLII. Where an ecclesiastic, notwithstanding the privilege of exemption from the secular forum, is placed on trial by the civil authorities for common offences, the ordinary will make a summary inquiry into the alleged crime and see whether, according to the sacred canons, the accused has made himself liable to infamy, irregularity or any other canonical punishment.

1º. Pending the trial, or while the accused is in prison, it will be advisable for the ordinary to adopt merely provisional measures.

2º. When the trial is over, if the accused is set at liberty, the episcopal curia will, according to the nature of the information obtained as above, proceed in the manner laid down in this Instruction.

XLIII. In doubtful cases and in the various difficulties coming up in practice ordinaries should consult this Sacred Congregation in order that they may avoid contentions and nullity of the acts.

XLIV. Episcopal courts cannot be so easily condemned to pay costs or damages. For, whenever it appears from the informative process of the curia *a qua* that there were sufficient indications of guilt to warrant the curia to proceed against the accused, the judge of appeal shall abstain from the condemnations in question, since those indications of guilt are sufficient to exonerate the judge of the lower instance from the true and real calumny or false accusation which is required for these condemnations.

XLV. The decrees of the Second Plenary Council of Baltimore, No. 125, so far as regards the character of missions or congregations, and Nos. 77, 108, so far as concerns the juridical effects of the removal of missionaries from office, are in no wise changed or abrogated, excepting in so far as they are modified by the regulations which have been recently made respecting irremovable parish priests or rectors.

DE PRAESCRIPTIONE ADMITTENDA IN CAUSIS CRIMINALIBUS CLERICORUM.

Illustrissime et Rme Domine uti Frater,

Litterae Amplitudinis Tuae die 16 Junii 1894 datae ad obtinendam authenticam solutionem nonnullorum dubiorum circa praescriptionem delictorum carnis in causis criminalibus Clericorum, remissae fuerunt ad hanc Sacram Congregationem Negotiis et Consultationibus Episcoporum et Regularium praepositam, ad hoc, ut ea, qua ipsa pollet, competentia in re criminali Clericorum, quid in proposita quaestione sentiendum decerneret. Omnibus sedulo perpensis, Emi Patres in Comitiis habitis 4 Martii 1898 haec

retinenda censuerunt: tralatitii scilicet iuris esse, in causis criminalibus ecclesiasticis locum habere praescriptionem, et quidem nedum quando iudex procedit ad instantiam privati accusatoris, sed et quando ad vindictam publicam seu ex officio inquirit; huius vero praescriptionis eum proprium effectum esse, *ut solam perimat actionem poenalem*, siquidem per accusatum seu inquisitum, aut per eius procuratorem expresse de praescriptione iudicio oppositum fuerit.

Exinde facile est deprehendere, integrum tum accusandi tum inquirendi ius manere usquedum expresse non opponatur praescriptio, et omnino tenere iudicium si eadam opposita minime fuerit.

Quod si in iudicium praescriptio deducta fuerit et legitima recognoscatur, tunc perimit quidem actionem criminalem, at non civilem, quae forte ex eodem delicto promanat: et hinc, non obstante praescriptione, reum manere obnoxium omnibus effectibus canonicis non criminalibus ex patrato delicto provenientibus, manifesti iuris est. Immo licet praescriptione actio poenalis extinguatur, non tamen tollitur exceptio, quae perpetuo manet, iuxta iuris effatum; "Temporalia ad agendum, perpetua sunt ad excipiendum;" ideoque delictum illud, etsi praescriptum, potest reo semper opponi per modum exceptionis, eique obest, si ad ecclesiasticas provisiones concurrere vellet.

Quod autem spectat ad tempus necessarium ad dictam praescriptionem inducendam, regula generalis est, actionem iniuriarum spatio unius anni; crimen peculatus et delicta carnis spatio quinque annorum; caetera vero crimina spatio viginti annorum a die commissi delicti continuorum praescribi. Verumtamen si agatur de delictis, quae successiva sunt et permanentia, in his nulla praescriptio locum habet nisi a die cessantis delicti; quemadmodum si delictum fuerit *totaliter* occultum, praescriptionem non a die commissi criminis, sed a die scientiae accusatoris vel inquisitoris currere placet.

Illud demum haud praetereundum est, quod criminibus raptus, stupri per vim illati, et adulterii cum incestu coniuncti, nonnisi lapsu viginti annorum praescribatur; criminibus vero suppositi partus, parricidii, assassinii, laesae maiestatis, duelli, falsae monetae, apostatatus, haeresis, simoniae, concussionis, abortus et sodomiae, nullo unquam tempore praescribatur, sed perpetuo horum criminum rei, dum vivunt, accusari et inquiri possunt. Quibus omnibus SSmo Domino Nostro relatis, in audientia habita ab infrascripto Cardinali Praefecto die 21 Martii an. 1898, Sanctitas Sua sententiam Eminentissimorum Patrum adprobare dignata est.

Haec significanda habui Amplitudini Tuae, cui fausta et prospera omnia a Deo adprecor.

L. ✠ S. SERAPH. *Card.* VANNUTELLI, *Praef.*

Romae, die 22 Martii, 1898. A. TROMBETTA, *Secret.*

DECREE "TAMETSI" IN AMERICA.

The decree "Tametsi" *has been published* in the following places in America: All the regions which sometime were under rule of the Spaniards or Portuguese, even though not yet inhabited, (*S. O. Jan.* 23, 1882); Mexico, Curacao, Trinidad; Canada, especially lower, (*S. O. Nov.* 14, 1883) Quebec city and diocese at least in part; Province of New Orleans; Province of San Francisco, and Utah except the part east of Colorado river; Province of Santa Fe, except the western part of Colorado; Indianapolis diocese, St. Louis city; Places called St. Genevieve, St. Ferdinand, St. Charles, in the Archdiocese of St. Louis; Places called Kaskasia, Cahokia, French Village, Prairie du Rocher in Belleville diocese; (The parish of Detroit city.)

The decree *has not been published* in America in the following places: Province of Baltimore (*S. Cong. Propaganda Dec.* 13, 1817.) Provinces of Philadelphia, New York, Boston, Oregon, Milwaukee, St. Paul, Dubuque, Cincinnati, except the diocese of Indianapolis (and the parish of Detroit); St. Louis, except the city of St. Louis and places mentioned above; Chicago, except places of Belleville diocese mentioned above. (*S. O. Nov.* 25, 1885.)

It is *doubtful* about the publication of the decree in the diocese and province of Quebec in Canada. Further, about the year 1840, the Bishop of Kingston, whose diocese then contained all the present province of Toronto and half of that of Ottawa, published the decree throughout his whole diocese. In 1852 the bishops of Canada in council doubted about the validity of the publication, there being no real parishes. To their request to confirm the publication the S. Propaganda gave an ambiguous reply. But on Nov. 14, 1883, the Holy Office in a similar case (St. Hyacinth) held the publication to be valid. Hence it seems valid in Ontario, there being no doubt about the *fact* of publication.

The decree *is no longer observed*, nor of obligation, in the parish of Detroit, because it is not mentioned as of obligation in the decree of the Holy Office of Nov. 25, 1885. It is reported the decree is not observed in Canada in the Provinces of Halifax, Ottawa and Toronto, although in Rome (*Cf. Zitelli Juris Ec. p.* 431) it is held as validly published in those places.

GENERAL INDEX.

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THE END.